The Planning Inspectorate

Costs Decision

Inquiry held over 30 days between 12 January 2021 and 12 March 2021
Site visits made on 17 December 2020 and 10 March 2021

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Panel of Inspectors appointed by the Secretary of State

Decision date: 26 May 2021

Costs application in relation to Appeal Ref: APP/C1570/W/20/3256619 London Stansted Airport, Essex

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Stansted Airport Limited for a full award of costs against Uttlesford District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for airfield works comprising two new taxiway links to the existing runway (a Rapid Access Taxiway and a Rapid Exit Taxiway), six additional remote aircraft stands (adjacent Yankee taxiway); and three additional aircraft stands (extension of the Echo Apron) to enable combined airfield operations of 274,000 aircraft movements (of which not more than 16,000 movements would be Cargo Air Transport Movements) and a throughput of 43 million terminal passengers, in a 12-month calendar period.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The Submissions for Stansted Airport Limited

2. The application for costs was made in writing. In summary, it says that the development should clearly have been allowed by the Council having regard to relevant policies and considerations so that there would have been no need for the appeal, and the significant costs involved, whatsoever. Indeed, that was the resolution of the Council in 2018 and there were no changed circumstances to justify the subsequent refusal of planning permission. This was the consistent advice of the Council's professional officers and legal advisors.

3. The decision to refuse planning permission resulted from a discussion that did not weigh issues in a planning balance, take account of proposed mitigation or consider the potential for making the development acceptable using conditions. No additional information was sought by the Council, informally or formally through the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations).

4. By the exchange of evidence, the Council had returned to a position that planning permission should be granted, subject to conditions and obligations. Each of the Council's respective witnesses agreed that matters of noise, air quality and carbon could be overcome by the imposition of conditions. Yet, the Council did not seek to impose conditions and refused planning permission.

5. The Council's reasons for refusal are imprecise, vague and unsubstantiated. They do not stand up to scrutiny and there was no material difference between the position in respect of noise, air quality and carbon between its resolutions in 2018 and 2020. Nor did the Environmental Statement Addendum (October 2020) (ESA) materially alter these assessments.

6. The Council persisted in arguing for the imposition of a condition (so called 'condition 15'), which is clearly unlawful and fails to meet the tests contained in the National Planning Policy Framework, unnecessarily prolonging the Inquiry.

The Response by Uttlesford District Council

7. The response to the costs application was made in writing. In summary, it says that the application was not made as soon as possible and should have been made sooner. This deprived the Council of the ability to address costs matters during the Inquiry, such that it is prejudicial and resulted in procedural unfairness. The decision by the Council to refuse planning permission was justified at the time the decision was taken and took account of all relevant matters. Its refusal reasons were sufficiently clear, and its decision was fully substantiated at appeal. The conditions pursued by the Council (including 'condition 15') were fully justified, lawful and accord with the relevant tests for planning conditions. The Council did not act contrary to established case law and had regard only to relevant and material considerations.

Reasons

8. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

9. Applications for costs should be made as soon as possible and before the close of the Inquiry, in accordance with the PPG. Various indications were made by the appellant from the opening of the Inquiry that an application for costs was likely and so the other main parties should have been well aware of this possibility. Whilst the application could have been made earlier in the appeal process in relation to unreasonable behaviour known to the appellant well before the Inquiry opened, which would have been best practice, it was not unreasonable to wait for the conclusion of evidence in anticipation that the Council might yet substantiate its case and obviate the need for a costs application.

10. Regardless, the application was properly made in writing before the close of the Inquiry. This accords with the PPG, which provides guidance rather than statute and should not be interpreted in an overly legalistic manner. The Council was granted the full 4-week period requested in which to consider the matter and respond. There can be no suggestion that it was disadvantaged or deprived of an opportunity to deal with the issues raised.

11. The application, setting out full details of the case against the Council, was made in writing and the Panel concluded that a written response would be the most efficient and effective way of dealing with the matter, allowing the Council to fully consider the content of the application and make a detailed response. Having heard much from the Council during the Inquiry about the reasonableness of its conduct and conclusions, apparently in anticipation of

such issues being raised, there was nothing to be gained from hearing further oral evidence on what are largely matters of fact and public record.

12. There is nothing unusual in dealing with costs applications in writing and, given the foregoing, in this case the written process adopted was not unfair or prejudicial to the Council. Indeed, had the appellant not applied for costs, the Panel might have initiated such an award, which would necessarily have followed a written process after the conclusion of the Inquiry.

13. The Council resolved to grant permission for the development on 14 November 2018 but subsequently reconsidered its position more than a year later and then formally refused planning permission. Whilst there is nothing wrong with a different committee exercising different planning judgement, such a drastic change in position by a public body should be fully and robustly justified.

14. In 2018, the Council rightly based its deliberations on the Environmental Statement (February 2018) (ES) available at that time and accepted its conclusions that there would be negligible impacts arising from the proposed development. It was further concluded that the development would accord with the development plan and that there were no material considerations indicating a decision other than in accordance with the development plan.

15. Despite advice from its officers that there had been no material changes in policy or circumstances that would justify a different decision in 2020, the Council formally refused planning permission for four reasons. This was notwithstanding the negligible impacts that had been identified and accepted within the ES, the conclusions of which remained substantially unchallenged.

16. Having identified significant policy support for the development, any new concerns would have needed to be significant and have some prospect of tipping the favourable planning balance. At no time was additional information sought from the appellant under Regulation 25 of the EIA Regulations that might have overcome any such concerns or provided an answer to other queries of the Council.

17. The reasons for refusal were unquestionably vague and generalised, suggesting that the appellant had failed to demonstrate the effects on aircraft noise and air quality despite the extensive evidence presented and accepted on these topics. The reasons for refusal left the actual and specific concerns of the Council opaque, even having regard to the committee minutes. Ultimately, the issues relied upon at appeal, some of which had been discussed during the committee, could not reasonably have been expected to materially alter the favourable planning balance. Indeed, the Council's own appeal evidence was that the planning balance was favourable, such that planning permission should be granted.

18. The reasons for refusal became vaguer still at reason 3 which sought to rely on a conflict with general accepted perceptions and understandings of the importance of climate change. Climate change and related policy matters had been considered at length by the Council in light of extensive submissions on the topic. Whilst the 2050 Target Amendment to the Climate Change Act 2008 occurred after the initial resolution to grant, no material change in relevant and applicable policy was identified by the Council, nor were the negligible impacts of the development altered. It was not credible or respectable for the Council to identify this as a matter that should now result in the refusal of permission.

19. The final reason for refusal related to a failure to provide necessary infrastructure and mitigation. However, it remains unclear what was needed that could not have been secured by condition; was not already provided for in the S106 agreement before the Council; or could not have been secured through negotiations on the submitted planning obligations. It was open to the Council to impose whatever conditions it saw fit applying the relevant tests.

20. Attempts to substantiate these reasons for refusal during the appeal were not convincing. Nor was the reliance on additional information provided in the ESA, which identified only marginal changes in the assessment of effects from the ES. The Council nevertheless maintained its case and presented evidence relating to all four refusal reasons.

21. This was notwithstanding the Council's witnesses individually accepting that the issues raised could be overcome by conditions or obligations, and its planning witness having accepted in written evidence that the development was acceptable in planning terms overall. Again, it was concluded that the development would accord with the development plan and should be granted planning permission subject to conditions and obligations. Such an approach could and should have been taken at the time of the Council's decision and did not warrant the Council's continued opposition to the proposal at appeal. So far as conditions were pursued, much time was taken at the Inquiry dealing with 'condition 15', an unnecessarily onerous and misconceived condition that patently fails to meet the relevant tests.

22. The strength of evidence in favour of the proposal is such that the application should clearly have been granted planning permission by the Council. Its reliance on a perceived direction of travel in policy or emerging policy that may never come into being in the form anticipated is not a sound basis for making planning decisions. As such, the appeal should not have been necessary.

23. The Panel therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

24. The Panel has had regard to the various court judgements and other documentation supporting the Council's response in reaching its conclusions.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Uttlesford District Council shall pay to Stansted Airport Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

26. The applicant is now invited to submit to Uttlesford District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Michael Boniface	*G D Jones*	*Nick Palmer*
INSPECTOR	INSPECTOR	INSPECTOR