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## Costs Decisions

Inquiry held on 20 November 2018 and 25 February to 1 March 2019

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10<sup>th</sup> April 2019

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### **Costs application A in relation to Appeal Ref: APP/K0235/W/18/3203051 Land off Clapham Road and Manton Lane, Bedford**

- 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 Bedford Borough Council for a partial award of costs against Rushmoor School.
  - The appeal was made against the refusal of planning permission for the construction of school buildings; indoor tennis courts and pavilion building; outdoor tennis courts; and rugby pitches.
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### **Costs application B in relation to Appeal Ref: APP/K0235/W/18/3203051 Land off Clapham Road and Manton Lane, Bedford**

- 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 Rushmoor School for a partial award of costs against Bedford Borough Council.
  - The appeal was made against the refusal of planning permission for the construction of school buildings; indoor tennis courts and pavilion building; outdoor tennis courts; and rugby pitches.
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### **Decisions**

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

### **Reasons**

1. The Council's application (Application A) was made in writing whilst the Inquiry was still sitting. The appellant's application (Application B) and both sets of responses were made in writing after the Inquiry had finished sitting.
2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has (i) behaved unreasonably and (ii) thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

#### *Application A*

3. The Council's application was made on procedural grounds. It is argued that the appellant behaved unreasonably in changing its position on whether or not the option for a single access serving the proposed school should be pursued at
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the Inquiry. At the opening of the Inquiry the appellant asked for both the single and the dual access options to be considered. The Inquiry was subsequently adjourned and both parties produced further evidence on both options. At the resumption of the Inquiry the appellant initially indicated that it wished to pursue the dual access option only. However, in response to the Council signalling that it would make an application for costs on the basis of the wasted expense incurred in producing further evidence on the single access option, the appellant changed its position and asked for both options to be considered.

4. The change in the appellant's position was clearly a response to the threat of an application for an award of costs, rather than a review of the substantive merits of the two options. However, the change of position at the resumption was prompt and was, essentially, a return to the position at the opening of the Inquiry. No Inquiry time was wasted pursuing the dual access option only and the expense in producing the additional evidence for the single access option during the adjournment was, in the end, necessary. Consequently, whilst the situation was regrettable, I consider that it did not directly result in the Council incurring unnecessary or wasted expense.
5. I therefore find that the second part of the test for an award of costs set out in the PPG (paragraph 16-030-20140306) has not been demonstrated and that a partial award of costs is not justified.

*Application B*

6. The appellant's application was also made on procedural grounds. It considers that the Council's application for an award of costs amounts to unreasonable behaviour and that it should be awarded costs for the expense incurred in responding to the Council's application.
7. I have found that the Council is not entitled to an award of costs. However, I have also found that the appellant's behaviour in changing its position regarding the single and dual access options was regrettable and not related to the respective merits of the options. Moreover, the appellant's response to the Council's application extends into substantive matters which were not the subject of the Council's application. I am also mindful that the Inquiry significantly overran its scheduled timing, not least because the appellant pursued matters, such as design, which were not in dispute between the parties. Had less time been spent on those matters, it is likely that the Council's cost application could have been dealt with orally, thereby minimising the time and expense incurred by the appellant in responding to it.
8. These circumstances are readily distinguishable from the position in the Miller Homes case (Costs Decision APP/J3720/W/15/308970) cited by the appellant.
9. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a partial award of costs is not justified.

*Simon Warder*

INSPECTOR