

IN THE MATTER OF

APPEAL BY ROSCONN

**LAND SOUTH OF RADWINTER ROAD,
SAFFRON WALDEN, ESSEX**

APP/C1570/W/22/3296426

**COSTS APPLICATION
ON BEHALF OF
THE APPELLANT
AGAINST
THE RULE 6 PARTY**

No5
CHAMBERS

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Introduction

1. This is an application for a full award of costs made by the Appellants.
2. It is an application for a full award of costs against the Rule 6 Party.
3. It relates to both the substance and procedure of the Rule 6 Party's case.
4. It is made before the close of the inquiry.

Background

5. The elected members of Uttlesford District Council refused permission for this application. The Members' reasons were painfully weak to the point of being embarrassing. They included an accusation that adding a set of traffic lights in a town centre location would harm the Conservation Area to such an extent that the extensive public benefits of the scheme would not outweigh it.
6. The Town Council and Parish Council became involved and decided to take up Rule 6 Party status. They then submitted a statement of case and a huge amount of documentation, which filled three lever-arch files. They raised a myriad of issues.
7. Further evidence was submitted which led the District Council to withdraw its opposition to the proposal. It recognised that the reasons for refusal were not sustainable in light of the evidence submitted.
8. One might have imagined that the Parish Council and the Town Council would have taken notice of the fact the professional officers and even the Councillors had recognised there was no substance left in the reasons for refusal. But seemingly undeterred they pressed on. Further additional evidence was submitted in the form of proofs of evidence. But there was then ambiguity about the number of witnesses that would be called to support the Rule 6 party's case.

Procedural Claim

9. A vast number of issues were raised by the Rule 6 party. But to a very large extent they were not progressed in the final evidence. This gave rise to a lot of wasted time and evidence, which the Appellant had to prepare. These was

a lot of time and energy used to progress, investigate and address the issues raised. This included the work on:

- Sustainability – a statement was prepared by Turley to address the Rule 6 various concerns about more sequentially preferable sites better suited for housing, the alleged lack of sustainable connections to facilities, the calculations of distances to facilities inconsistent. But no evidence was prepared or provided in Rule 6 proofs of evidence.
 - Ecology – a statement was prepared by Harris Lamb to address claims regarding loss of important hedgerows, the presence of bats not robustly assessed and an alleged inaccurate assessment of biodiversity gain. The Rule 6 party provided no evidence to support its case on these points.
 - Noise – a statement was prepared by Resound to respond to the concerns of the Rule 6 Party. The Rule 6 Party stated they would provide evidence to support their claims that noise from traffic generated by the proposal would harm residents of both Swards End and Saffron Walden. The Rule 6 party provided no evidence to support its case on this issue.
 - Drainage – Rappor prepared a statement to address concerns the Rule 6 Party's concerns on flooding, including failing to direct proposals to sequentially preferable lower risk areas of flooding, the proposed use is more vulnerable to flooding than the existing use and increase in surface water run off resulting from the development. The Rule 6 party provided no evidence to support its case on these points.
10. It is quite clear that the Rule 6 Party struggled to find any professional witnesses to support its case. In the end it came down to a single expert on heritage. The vast majority of the issues raised by the Rule 6 Party in its statement of case were not progressed at all, or with any credible evidence.
11. To the extent that the Appellant had to prepare evidence on these points, the Rule 6 Party should pay for the cost of that work.

Substantive Claim

12. The Rule 6 Party only progressed two matters with live oral evidence

(i) Highways

13. The Rule 6 Party called a local resident to raise other concerns mostly about traffic. The concerns were not substantiated with any tangible evidence. Indeed, it was made clear that the highway mitigation works which formed part of the proposal had not been considered. This is completely inappropriate. The mitigation works should have been considered.

(ii) Heritage

14. Heritage was the only matter upon which the Rule 6 Party called expert evidence at the inquiry. The heritage evidence from the Rule 6 focussed on the traffic lights at the junction of Church Street and High Street. Given this was the basis of the District Council's original concern, which was subsequently abandoned, it was a surprising point to focus on. One has to take a step back from the detail of this point, to appreciate how absurd it is to suggest any serious harm arises from traffic lights being introduced to a town centre Conservation Area. A town centre where there are already traffic lights. Claims that this gives rise to only slightly less than substantial harm are simply not credible. Evidence is not credible evidence just because an expert has been prepared to say it. That expert may be unreasonable in their assertions. Certainly, that is the position in this case.

15. Harm was also raised in respect of the setting of the listed St Mary's Church and a listed building in Swards End. But as the XX revealed, the witness had not visited the appeal site to judge the impact of the proposal on the setting of the Church and could not say how far away the Church was. She also failed to visit the views from the windows of Pounce Hall the listed building before writing her proof of evidence. This evidence was unfortunate in the extreme.

16. That there was little substance to the heritage concerns is blindingly obvious. But what makes the Rule 6 Party's case so unreasonable, is its failure to ask itself the critical question: do the public benefits of the proposal outweigh the heritage harm. This question was neither posed nor answered in the Rule 6 evidence to the inquiry. Yet it is the critical question when considering any proposal in which there is a heritage impact which is less than substantial.

17. Had the question been asked, the answer would have been obvious in this case, as the benefits are so extensive.

18. The problem is compounded by the fact the Rule 6 Party has not addressed whether the tilted balance applies in this case. Nor has it offered evidence about whether material considerations outweigh the harm identified through the conflicts with the Development Plan. There has been no meaningful attempt to engage in any form of planning balance. And yet the Rule 6 Party must know that all planning decision must be made on the available evidence of planning considerations because they are professionally represented by a planning solicitor.

19. The Rule 6's approach to the Development Plan, and policy S7 in particular is utterly unrealistic. There is no conceivable way in which the settlement boundary of the settlements in Uttlesford can be seen as anything other than out-of-date. To cling to the idea that development beyond the settlement completely unrealistic and unreasonable.

20. The Rule 6 substantive case is not realistic or reasonable and should not have been progressed. The Appellant has had to address it with expert evidence which should have been completely unnecessary.
21. It is accepted that the District Council caused the appeal to occur. That generated the need for the inquiry. It is accepted that it was the additional information was submitted by the Appellant which led the District Council to withdraw its reasons for refusal. A substantial amount of the costs incurred in progressing the matter to appeal do not therefore lie at the door of the Rule 6 Party.
22. But the absent the Rule 6 Party's evidence, there would have been no need to hear any live oral evidence at the inquiry. It is the expense of the highways and heritage evidence and the four inquiry days in which the inquiry lasted which is the subject of the costs claim against the substance of the Rule 6 Party's case.

Conclusion

23. Overall, the Rule 6 Party has:

- (i) caused the Appellant to have to investigate and present evidence on a range of matters, which the Rule 6 decided not to progress. This is the procedural costs claim.

- (ii) caused the Appellant to address
 - (a) highway evidence despite the fact the Rule 6 Party had no expert evidence to support its case and by refusing to consider the scheme mitigation.

 - (b) the Rule 6 Party's case on heritage harm, when that case was vastly exaggerated in term of impact (just less than substantial harm) ;based on claims of (unsubstantiated) harm to cellars being of equivalence to partial demolition of a listed building; based on unsubstantiated evidence about the impact; setting and views on the Church and Pounce Hall; and does not address the correct test in terms of whether that heritage harm can be relied upon to refuse the proposal, as required under the NPPF.

This is the claim relating to the substance of the case.

12 SEPTEMBER 2022

CHRISTOPHER YOUNG QC

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