Planning Inspectorate

Costs Decision

Inquiry held on 25-27 November & 2 December 2025

Site visits made on 24 & 26 November 2025

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 2 January 2026

Costs application in relation to Appeal Ref: APP/Y3940/W/25/3370482
Land North of Bath Road, Corsham, SN13 9XR

- 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 Great Tew Construction LLP for a partial award of costs against Mr Pank Koria.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a residential development (including 30% affordable housing), up to 1,550m^2 mixed-use hub (Use Class E), construction of 4-arm roundabout junction, secondary pedestrian access, parking, public open space with play space, pedestrian and cycle routes, landscaping, sustainable drainage system (SuDS) and associated infrastructure with all matters reserved except for access.

Decision

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

The submissions for Great Tew Construction LLP

2. The costs application was submitted in writing.

3. The Appellant submits that the Rule 6 Party (R6) behaved unreasonably in the conduct of its case in the following respects:

   1) The R6's evidence on heritage matters went far beyond the impact of Guyers House Hotel (GHH) and the Pickwick Conservation Area (PCA). Introduced for the first time in Ms Burley's (the R6's heritage witness) proof, harm was alleged to St Patrick's Church, 52 Pickwick, the Round House, Beechfield House, Hare & Hounds Inn, Guyers Cottages and Traveller's Rest. That went substantially beyond the R6's Statement of Case (SoC)/Rebuttal to the Council's SoC and the issues agreed at the second Case Management Conference (CMC).

   2) Notwithstanding the length of the heritage proof, there was no substantive evidence to support the contention that the appeal site is within the setting of these additional assets, contributes to the significance of those assets and/or that the proposed development would harm their significance. There was also a failure to follow the 'staged' approach in Historic England's GPA3.

   3) As regards non-designated heritage assets, the R6 failed to apply Historic England's advice in AN7 on the identification of non-heritage assets and/or provide clear evidence that Guyers Cottage and/or Traveller's Rest should be considered non-designated heritage assets.

4) The heritage rebuttal proof submitted on 18 November introduced and criticised the previous material associated with the application and 2015 inquiry and subsequent planning permission. No such criticism was identified by the R6 in its SoC despite the same material being available from the outset.

5) On 18 November the R6 submitted a technical report by Mr Fulton (the Fulton Report) criticising the Minerals Reserve Assessment[1] (MRA) a document that had been available since late 2024. That was followed up by a further document (the R6's late submission) from Mr Pank Koria (PK) submitted the day before the inquiry arguing that the MRA should be withdrawn "*in the public interest*". Many of the points raised in this late submission did not go to the merits or reliability of the MRA and went beyond the mineral sterilisation points raised in the R6's SoC. The R6 also failed to comply with the Inspector's Direction that any evidence in relation to minerals sterilisation should be submitted by 7 November.

6) The R6 raised a large number of matters relating to the draft Unilateral Undertaking (UU) at the last minute which could have been raised earlier and in a timely manner.

4. The above behaviour resulted in the following unnecessary expense:

a) The timetable agreed by the parties allowed for 1 day to examine/cross-examine the heritage evidence of Ms Burley & Mr Brown (Day 2) and a Round Table Discussion (RTD) on minerals sterilisation (Day 3) to allow the Appellant to respond to the Fulton Report.

b) The widening of the R6's heritage case necessitated the Appellant's heritage witness to submit a rebuttal proof. Inevitably, the evidence on heritage matters took longer than it should have because of the unreasonable introduction by the R6 of many more additional heritage assets.

c) The additional evidence submitted in relation to mineral sterilisation and the reliability of the MRA required, as a matter of fairness, the Appellant to call its own minerals expert (Mr Bailey). The inquiry therefore had to sit on an extra day. But for the R6's unreasonable behaviour, this would not have been necessary.

d) The R6's belief that the additional evidence could be dealt with by the Appellant submitting a written note disregards inquiry procedure. The point of conducting the appeal under the Inquiry Rules is to avoid parties having to respond to matters on the hoof because they are raised late in the day. That is sometimes unavoidable but in this case all the points made by the R6 relating to mineral sterilisation and the MRA could and should have been made well in advance of the inquiry.

e) The R6's submission, two working days before the inquiry, of 36 questions or issues relating to the UU was also unreasonable. Consequently, it was necessary to call Mr Bruton (the Appellant's solicitor responsible for negotiating the UU) to appear by video link at the RTD on Tuesday afternoon to address these matters. This would not have been necessary but for the R6's unreasonable behaviour and has resulted in the Appellant incurring yet further additional and unnecessary expense.

[1] CD3.20

f) Had the R6 restricted its evidence to the heritage assets identified in its SoC, not persisted in presenting a noise case that reduced the noise rating levels below what even the Council was requesting and/or advanced an unfounded and untenable case about the reliability of the MRA, it is likely that the appeal would have been heard in 1 or 2 days. It certainly would not have gone into a third day as it did.

5. In light of the above, the Appellant seeks a partial award of costs against the R6 for its unreasonable procedural conduct in the course of the appeal which has resulted in additional time and expense being incurred by the Appellant unnecessarily at the inquiry.

The response by Mr Pank Koria (Rule 6 Party)

6. The response was made in writing.

7. The Appellant's application is wholly unjustified and should be refused. The R6 did not behave unreasonably. Neither did its conduct cause the Appellant to incur unnecessary or wasted expense.

8. At the second CMC, the Inspector sought clarity from the R6 regarding the issues that would be pursued at the inquiry. That clarity was provided when it was confirmed that the R6 would call a heritage and noise witness. The R6 also stated that he would confirm in short order whether he wished to pursue any other points. He did so. The Inspector had in any case ordered that other matters covered in the R6's SoC be dealt with in writing. Accordingly, the R6 wrote to the Appellant on 22 October confirming his acceptance of that procedure but, reasonably, reserved the right to respond to matters arising from the other parties' proofs once they were filed.

Heritage

9. As is clear from the correspondence, it was clarified within a matter of days from the second CMC which matters the R6 intended to focus upon. On 27 October it was stated that the "…*scope is the settings of* ***the relevant*** *designated assets*…" (emphasis added). The Appellant is therefore unjustified in arguing that the R6's evidence would be confined to the impact of the development upon the PCA and GHH alone.

10. In the same email on 27 October the R6 stated that the topics would be confined to points made in writing would involve short written notes "*..to be filed only if helpful in light of the Appellant's or Wiltshire Council's proofs/SOCGs*…". This is what the R6 did. It is clear from the chain of email communications following the CMC that the R6 duly sought to assist the Appellant by confirming the scope of its contribution, but also, fairly and reasonably, reserved its position as set out. The R6's concern always was to assist the Inspector.

11. The Appellant's complaint, that Ms Burley was unreasonable in considering all relevant heritage assets is nothing short of bizarre. Ms Burley had a duty to the inquiry as an independent professional witness. That was her first duty, above and beyond the duty to her client. The Appellant's comments amount in effect to a submission that relevant assets should be ignored.

12. Plainly an approach of artificially confining the assessment to some relevant assets and not others would be wholly wrong in principle and contrary to the NPPF. The Appellant's position is all the more untenable given that as part of its closing submissions it is argued that the Inspector had before him material making an assessment of relevant assets that went beyond just those two. For the above reasons it cannot sensibly be suggested that it was unreasonable for Ms Burley, a competent professional of 30 years' experience, to have considered all relevant heritage assets. Indeed, anything else would have been misleading to the inquiry.

13. Even weaker is the Appellant's suggestion that the length of the inquiry was longer due to Ms Burley's identification of additional heritage assets. Ms Burley began her evidence in chief at 10.29 on Day 2 of the inquiry and finished at 11.05. She was then cross-examined until approximately 12.20, with the inquiry session ending at 12.40 (after questions from the Inspector and re-examination). Day 2 ended early, after Mr Brown's evidence at 15.17. The R6 can hardly be accused of delaying matters and taking undue time in the inquiry. Given that the minerals RTD on Day 3 took a total of 54 minutes, that could have been accommodated towards the end of Day 2. The Appellant did not at that point suggest that the rest of the available inquiry time that day should be used.

Mineral safeguarding

14. The R6 reserved the right to say something more on the MRA if warranted. The Appellant complains that the R6 did not take issue with the MRA in its SoC, but a wider minerals sterilisation point was made. The Fulton Report was not prompted by the MRA but rather the supplementary Technical Note at Appendix 10 of Mr Grant's proof.[2] In the R6's view, this effectively downgraded the mineral resource compared to the MRA.

15. The fact that Mr Bailey does not agree with the Fulton Report is nothing to the point. That is a substantive matter, separate to the resolution of the Appellant's costs application. The R6 indicated at the outset that if anything arose from the other parties' proofs, a response may be warranted. In the event, the R6 responded extraordinarily quickly. The proofs were submitted on 12 November. The Fulton Report was concise, prepared and filed in time for the rebuttals to the proofs of evidence, on 18 November. It cannot reasonably be claimed that the Fulton Report resulted in unnecessary time and expense.

16. It was not necessary to hold a mineral RTD. The Inspector had already directed that mineral sterilisation matters could be dealt with in writing. Instead, the Appellant could have asked Mr Bailey to prepare a written note rather than causing all parties to attend the RTD. The Appellant says that suggesting a written note is some sort of 'wilful disregard' of inquiry procedure, which is not true at all. It is extremely commonplace. Effectively the Appellant 'identified' the need for a RTD and then argued that that session wasted everyone's time.

17. The Appellant forgets that the R6's late submission on 24 November was in direct response to receiving an agenda for the minerals RTD to which the R6 had no input. Not only was the R6 not asked and invited to input into that agenda, but it was unilaterally declared that PK would be taking no part. That is in itself

[2] CD8.20k

unreasonable behaviour. PK explained that he was setting down in writing what he would wish to say at the RTD.

18. There was no justification for having purported to cut the R6 out of the RTD. It seems there was a wilful misunderstanding of his statement that he was not proposing to call his witness. Clearly that was on the assumption that the Appellant would respond in writing. PK in fact behaved with the utmost reasonableness in not complaining that holding the RTD with only one expert witness raised issues of procedural unfairness. In any case it was legitimate, in the circumstances, for him to have prepared his speaking note. Disappointingly, he received no credit at all for being transparent and setting out in advance what he would have wished to say, at the earliest opportunity after having been cut out of the process.

19. Again, the Appellant's response to that speaking note is out of all proportion to what actually happened. It was repeated that PK had made many points, and reference was made to the length of the document. In fact, it was just 12 pages long, double-spaced, and essentially boils down to asking 1) whether the Appellant had consent to take the minerals, 2) why was there no chain of custody in evidence and 3) was it not unfair to publish material that could damage the extrinsic value of those minerals. He asked the entirely reasonable question as to why there were only 3 boreholes made when there were examples from other sites of many more taken, in a grid pattern. He even submitted an example of the same to explain the basis for his question.

20. Whilst it may suit the Appellant's case to say that none of this was relevant, the fact is that it was. More so given that Mr Bailey confirmed that he did not have consent to take the minerals on the adjoining area. It was a legitimate line of enquiry in view of the link of the ownership of the site to the key issue of noise/vibration and residential amenity.

21. Moreover, Mr Fulton had given his expert view that not reaching one section of minerals for '100 years' was a reason to preserve them, not sterilise them. Again, whose evidence the Inspector prefers is not relevant here; obviously it is relevant to his consideration of the substantive issues, but even if he were to find against the R6 on that matter, that does not mean that the R6 should have been muzzled and prevented from even airing the concerns. Concerns which frankly legitimately arose from the material placed before the inquiry and which called for an explanation. Mr Bailey accepted that PK's points were valid ones and that it was valid to have raised them.

Response for Great Tew Construction LLP

22. The R6 appears to have misunderstood his role in the appeal. Paragraph 4 of the R6's response submits that "*once the Council withdrew on the first morning of the Inquiry, the Rule 6 Party's role in representing unresolved issues and assisting the Inspector became significantly more important in the public interest*".

23. That is incorrect. The R6 is not a community organisation but a private individual who is opposed to the grant of planning permission for development he does not like close to his hotel. It is the Council who represents and acts in the public interest, not the R6. Acting in the public interest, the Council rightly considered that the appeal should be allowed, and planning permission granted.

24. The R6's role was to advance a positive case in relation to those matters which might affect and, therefore, be of concern to him. It was not his role to present purportedly "*unresolved issues*" in the public interest. For example, it was entirely appropriate for PK to be concerned about what effect the proposed development might have on GHH and to call evidence on that matter. It is completely different to have a purported concern about the impact of noise from mining activities on the amenity of proposed residents of the development, to question the reliability of the MRA and to raise questions at the last minute about the UU in an attempt to derail the appeal.

25. The R6's misunderstanding of his role has been apparent from the outset, notwithstanding the Inspector's help. It was PK's decision to seek Rule 6 status and to be legally represented. That decision came with responsibility to act in the appeal reasonably. That included identifying at an early stage the case he wished to advance at the inquiry and then to support that case in all respects. He did not have a roving brief to raise all sorts of matters that he thought might be in the public interest for the inquiry to consider.

26. The R6's SoC ran to over 50 pages and raised 12 separate issues – many of which were abandoned before the inquiry but nonetheless had to be addressed by the Appellant. The Appellant has suggested that this was prepared with the assistance of Artificial Intelligence (AI) something which undeclared would be contrary to the Planning Inspectorate's guidance. It is noted that the R6 has not denied that he has used AI in formulating his SoC or indeed other aspects of his case such as the late submissions on mineral sterilisation.

27. The Appellant has made its submissions in relation to the evidence of the R6's heritage witness and does not repeat them here. What is notable is that the R6 accepts that its heritage case at the inquiry went well beyond its SoC. The justification for doing so rests on Mr Koira's statement that the R6's heritage evidence would relate to "*the setting of the relevant designated assets*". The relevant designated assets had been identified and agreed by the R6 (attended by PK, his Counsel and Ms Burley) at the second CMC as being GHH and the PCA. There was no suggestion, even on 27 October when specifically asked to identify the scope of his evidence, that the assets allegedly impacted would include all those assets now relied on by the R6. Plainly a substantially greater amount of time had to be spent on considering and addressing the additional assets.

28. As regards to mineral sterilisation, the R6's submission in Costs Response that the Fulton Report and the R6's late submission were prompted by the Technical Note at Appendix 10 of Mr Grant's proof is completely contradicted by PK himself. In paragraph 42 of the R6 late submission, it is stated (emphasis added):

    "I would like to point out the following:

    • ***Appendix 10 does not replace the MRA, and relies entirely on it***

    • ***Appendix 10 does not state that it supersedes the MRA, nor that it withdraws any part of it, nor that the earlier assessment should be disregarded****.*

    • *Instead, Appendix 10 repeatedly refers back to the MRA, and expressly relies upon:*

- *the same borehole data,*
- *the same geological information,*
- *the same interpretation of strata, and*
- *the same conclusions about quality and viability.*

Sir, if the underlying sampling is flawed, undocumented, or unlawfully obtained, a document that simply re-states those conclusions cannot correct that flaw."

29. The MRA, the real target of the R6's late submission, had been available for a year at that point. Those belated criticisms relating to the borehole sampling, chain of custody of the samples etc had nothing to do with Appendix 10 of the Appellant's planning proof. That is being relied on as an excuse for unreasonably raising these matters at the last minute.

30. Given the importance attached to the Fulton Report and the alleged flaws in the MRA raised in the R6's late submission (which plainly are not a speaking note) it was inevitable that the inquiry would have to consider the points raised. No other party had raised concerns about the mineral resource. The R6 raised the issue and cannot now seek to avoid the consequences of the inquiry having to deal with it in the way it did which resulted in additional time and costs being incurred.

31. There can also no complaint about the RTD. The timetable agreed by the R6 identified the participant for the RTD as being Mr Bailey. The R6 could have amended the draft to indicate that PK wished to participate but did not. In any event, the RTD was intended to consider the matters that were already in evidence i.e. Mr Bailey's Technical Note and the Fulton Report. PK's additional submissions went well beyond those matters already in evidence and raised wholly new matters relating to the borehole sampling, chain of custody etc. By any measure that amounts to unreasonable behaviour.

32. A similar point can be made about the UU. The participants for that session were identified in the draft timetable and agreed to by the R6. The R6 did not indicate that PK wished to participate and his interest in the UU was not apparent until 17 November. Most of his points did not arise from the final draft of the UU and could have been made long before he did so because earlier drafts of the UU were contained in the Core Documents. There is no reasonable reason why the points he made on the final draft UU were not made earlier. Moreover, there was no reason for PK to be copied into every email about the UU given the obligations were concerned with addressing the Council's noise and vibration concerns. Further, the R6 has not identified any "*critical flaw*" in the UU as alleged, nor was he seeking to assist the inquiry.

33. The R6 insisted that he should be given Rule 6 status. Having been given that status he was bound by the procedural rules and responsibilities of being a Rule 6 party to advance his case in a positive way and to act reasonably. Despite being legally advised, he chose belatedly and unreasonably to raise concerns about assets other than GHH/PCA, the MRA and/or the UU which he wished to rely on to argue that permission should be refused. Inevitably, the Appellant had to respond to these late points and evidence and did it as efficiently as it could but nonetheless has incurred additional expense unnecessarily.

Reasons

34. Parties in planning appeals normally meet their own expenses. However, 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. The PPG advises that the aim of the costs regime is, inter alia, to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and the presentation of full and detailed evidence to support their case.[3]

35. An example of unreasonable behaviour in the PPG is "*prolonging the proceedings by introducing a new … issue*".[4] Related to this, the Planning Appeals Procedure Guide states that: *'A full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal*". Another example of unreasonable behaviour cited in the PPG is "*persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*".[5]

36. There are various strands to this cost application but in essence the Appellant argues that the R6 behaved unreasonably by widening its heritage and minerals case substantially beyond that outlined in its SoC and by submitting late evidence. It is said that this behaviour lengthened the inquiry and required the Appellant to instruct witnesses to respond to the points raised.

37. The costs application needs to be seen in light of the following timeline of events leading up to the inquiry:

- **23 September** – PK submitted a wide ranging SoC and a Rule 6 request, one week before the first CMC. [6]
- **25 September** – The Case Officer wrote to PK at my request providing him with a link to the Rule 6 Guide.[7] The email also advised PK "*you do not need Rule 6 status to be able to speak at the inquiry – you can do so as an interested party*". PK was informed of the date and time of the first CMC.
- **29 September** – First CMC. PK did not attend.
- **30 September** – PK wrote to the Case Officer confirming he wished to appear as a Rule 6 party and set out six topics on which he intended to submit evidence.
- **1 October** – The Case Officer wrote to PK at my request advising: (my emphasis added)

  As you know, Rule 6 status infers various rights, privileges and responsibilities. One of the rights as a Rule 6 party is the ability to call witnesses and cross examine the evidence of others. However, I should point out that both the Council and Appellant are only intending to call one witness each covering noise and vibration matters. At this stage there is no intention to call witnesses

[3] Paragraph: 028, Reference ID: 16-028-20140306
[4] Paragraph: 052 Reference ID: 16-052-20140306
[5] Paragraph: 049 Reference ID: 16-049-20140306
[6] There was a delay in the SoC reaching the Appellant which was no fault of the R6.
[7] Guide to Rule 6 for interested parties involved in an inquiry

on the wider issues raised in your Statement of Case (heritage, HRA, mineral safeguarding, highways and BMV land). Given that these matters are largely agreed between the Council and Appellant, it is agreed that they will be dealt with in a number of Statements of Common Ground.

While you are entitled to call your own witnesses, I would ask that you give careful consideration to whether the wider matters in your Statement of Case could be dealt with by an exchange of written evidence. It maybe that you or your advocate simply wishes to make oral representations on these matters at the inquiry and if that is the case you could speak as an interested person on the first day of the inquiry.

If you decide to call witnesses, I need to make you aware of the responsibilities that come with Rule 6 status. These include adhering to the inquiry timetable and otherwise ensuring that all conduct is reasonable. You should be aware that there is no immunity for Rule 6 parties in relation to costs. I would therefore strongly recommend that you wish legal advice on the matter before making a final decision.

- **7 October** – PK emailed the case officer confirming his participation as a Rule 6 Party. In response to my earlier comments about witnesses, PK pointed out that he was not bound by agreements between the main parties on the wider issues and intended to submit evidence on the following:

  "*heritage/LVIA at the gateway, Habitats Regulations parameters, minerals safeguarding/sterilisation, highways/NMU deliverability, and BMV soils/arboriculture. I intend to set these out in concise written notes/proofs and to make short oral submissions at the Inquiry, and would be grateful if the running order can accommodate a Rule 6 slot within the relevant topic sessions*"

- **17 October** – Second CMC. Counsel for PK indicated that the scope of matters to be relied on would be reduced and that he would call noise and heritage witnesses.

- **21 October** – The R6 wrote to the Appellant stating that he "*may*" submit "*short written notes*" on the following matters:

  i. *Habitats Regulations / ecology parameters at outline*

  ii. *A4 NMU deliverability and severance*

  iii. *Best and Most Versatile land / arboriculture interaction*

  iv. *Planning balance (plan-led conflict and tilted-balance interface*)

- **22 & 24 October** – The Appellant wrote to the R6 seeking clarification of what he meant by the word "may" in his 21 October email.[8] The R6 responded stating that with the exception of noise and heritage, he did not intend to submit separate technical notes beyond the material already in the SoC.

- **26 & 27 October** – There was a further exchange of correspondence regarding the scope of the R6's case given the wide-ranging nature of its SoC. The R6 responded reaffirming that he was relying on the matters in his SoC and would

[8] CD10.18

not introduce any new grounds beyond those already set out. In relation to heritage, it was stated:

"*I will file a Proof of Evidence from Nichola Burley (heritage), and she will attend to give oral evidence. The scope is the settings of the relevant designated assets and the settlement-edge/gateway composition, consistent with my SoC*."

On the other topics, PK stated he intended to submit short written notes (within SoC scope) to be filed only if helpful in light of the Appellant's or the Council's proofs/SoCGs.

- **31 October** – I wrote to PK through the Case Officer and advised:

  "Any written evidence in relation to the above matters will need to be submitted by 7 November, the same time as the deadline for proofs of evidence. To be clear, the Inspector is not currently inviting submissions on the matters listed above. If that position changes you will be notified accordingly".[9]

- **7 November** – Proofs were exchanged.
- **18 November** – Rebuttal proofs were served.
- **20 November** – PK submits a list of questions regarding the UU.
- **24 November** –PK submits a 12-page submission in relation to the MRA.[10]
- **25 November** – Inquiry opens.

Heritage

38. There was a stark expansion of the case contained in the R6's SoC in Ms Burley's proof. That was contrary to the express assurance given by PK in his email of 27 October that his evidence would be confined to "*the settings of the relevant designated assets*". The relevant assets were those identified at the second CMC as being GHH and the PCA.

39. The R6 argues that the heritage witness had a "*professional obligation*" to consider all the heritage assets she considered fit. I disagree. As with all planning inquiry witnesses, Ms Burley was first and foremost obliged to assist the inquiry which by extension means adhering to the relevant inquiry procedure rules. I do not consider professional witnesses have some kind of *carte blanche* to suddenly expand their client's case. Moreover, should they decide to do so, I am not persuaded that '*professional obligations*' can be used as a proverbial 'get out of jail card'. I therefore consider that the expansion of the R6's heritage case (sometimes referred to as 'case-creep') contrary to its SoC, email of 27 October and the CMC Summary and Directions, was unreasonable.[11]

40. It is germane that heritage matters were considered in some detail as part of the 2015 decision.[12] While that decision is now over 10-years old, there has been no meaningful change to GHH or the PCA or any of the other assets referred to by the R6. Beyond the submission of some interesting, but largely irrelevant, background

[9] The deadlines were subsequently amended to 12 November for planning proofs and 18 November for rebuttals.
[10] ID13b
[11] CD8.06
[12] CD6.01

information about the general development of Pickwick and Corsham, the information before me was essentially the same as that before the previous inspector. The R6 did not submit any probative evidence which cast doubt on the previous inspector's findings at paragraphs 107 and 123 of his decision. Accordingly, I consider the R6 persisted in objections to a scheme or elements of a scheme which an inspector has previously indicated to be acceptable. In my judgement that also amounted to unreasonable behaviour.

41. The above behaviour resulted in the Appellant calling a heritage witness to respond to Ms Burley's proof. Without the unreasonable behaviour, this would not have been necessary and therefore the Appellant is entitled to receive the costs which were incurred by responding to the R6's heritage case.

Mineral safeguarding

42. The R6's SoC contained a detailed section on minerals safeguarding and sterilization. Although a general concern was raised about the sterilization of the mineral resource under the appeal site, there was no criticism of the MRA which was only mentioned once and had been available since late 2024. Responding to the R6's SoC, Mr Grant's proof set out the minerals position at paragraphs 5.8-5.20. A Minerals Technical Note authored by Mr Bailey was attached at Appendix 10. [13] The Technical Note did not introduce any new matters and did not depart from the findings of the MRA.

43. The Technical Note was only provided because the R6 had indicated on the 27 October that he *may* produce short written notes on, amongst other things, "*Minerals sterilisation insofar as it is a planning consequence of the Appellant's own noise-mitigation stand-off / mat-only zones overlapping the safeguarded/Probable reserve*". The R6 initially responded to the Technical Note through PK's Rebuttal proof.[14] This appended the Fulton Report highlighting what was seen as a number of inconsistences between the MRA and subsequent Technical Note. Although fairly succinct, the 8-page report along with PK's 4-page Rebuttal Note were probably at the limit of what could be considered a '*short written note*'.

44. The first question is therefore – *did the R6's rebuttal introduce new evidence or simply respond to matters in Mr Grant's proof*? Having carefully considered the content of the MRA, the Technical Note and the contents of Mr Grant's proof, I consider the R6's rebuttal did unintentionally introduce new matters. I say unintentionally because for the reasons explained by Mr Bailey at the RTD, the concerns raised in the Fulton Report were predicated on a misunderstanding about the fundamental purpose of the MRA and Technical Note. As it turned out there was no discrepancy or downgrading between the MRA and Technical Note. Had matters ended there, it is likely that I could have dismissed the Fulton Report as procedural clumsiness on the R6's part.

45. However, the matter did not end there. The day before the inquiry and knowing that the Appellant had applied for an award of costs against the R6, a 12-page critique of the MRA was submitted by PK the day before the inquiry. It was thus undeniably late evidence. The substantive points raised included concerns about how the samples had been taken, the identity of the drilling company, the absence of a verifiable 'chain of custody' for the samples, non-compliance with PERC Standards,

[13] CD8.20k
[14] CD8.25

the number of boreholes and the inconsistency of the sampling undertaken on the appeal site compared with another site in Gloucestershire.

46. The R6's primary defence to the late submission is that it merely responded to the supplementary Technical Note at Appendix 10 of Mr Grant's proof which in the R6's view, downgraded the mineral resource compared to the MRA. There are three principal points here:

    1) The Fulton Report had already raised the 'inconsistency' point, it is not therefore clear why PK felt the need to add anything further.

    2) On any fair reading, the late submission did not deal with alleged inconsistencies with the Technical Note or a downgrading of the MRA, rather it was a detailed and systematic attack on the latter and went far beyond what could reasonably be considered as a 'speaking note'. It also went well beyond matters raised in the R6's SoC, email correspondence flowing from the second CMC, Mr Grant's proof including Technical Note and even the matters raised in the Fulton Report.

    3) As with the Fulton Report, the matters raised by the R6 in its late submission patently failed to stand up to scrutiny at the RTD and a number of matters such as land ownership issues, were clearly not material planning considerations.

47. The R6 also argues that the late submission was in direct response to receiving an agenda for the RTD to which PK had had no input. I find that unconvincing. The draft agenda for the Minerals RTD circulated by the Appellant on 24 November did not include reference to the matters that were contained in the late submission. As to whether the R6 was cut out of the RTD, the draft agenda circulated the day before the inquiry was just that, a draft. It was therefore entirely open to PK to have responded by informing the Appellant that he or his expert (Mr Fulton) wished to participate.[15] I do not therefore agree that the R6 was '*cut-out*' of the minerals RTD in the manner implied. On the contrary, the R6 through his Counsel participated in the session and asked Mr Bailey a number of questions.

48. For the above reasons, I am satisfied that the R6's late submission crossed the unreasonable behaviour threshold. The next question is whether this caused the Appellant unnecessary or wasted expense. In my view, the R6 raises several valid arguments about the way the Minerals RTD was introduced by the Appellant. My views were not sought before it was inserted into the inquiry programme. While I was subsequently content for it to proceed when the matter was discussed in opening, I still maintain the view that Mr Bailey could have dealt with the matters arising from the Fulton Report and the R6's late submission in writing, particularly since Mr Fulton was not able to attend the inquiry.

49. However, that does not really help the R6, whether orally at the inquiry or in writing, the Appellant through Mr Bailey was still required to respond to the R6's submissions. I therefore consider the Appellant is entitled to reclaim the expense that would have been incurred had Mr Bailey responded to the Fulton Report and PK's late submission in writing.

[15] As it turned out Mr Bailey was not available to attend the inquiry, but this should have been checked by the R6 before his Note was submitted in evidence.

Unilateral undertaking

50. The Appellant complains that the submission by the R6 of 36 questions or issues relating to the UU, two working days before the inquiry was unreasonable and resulted in Mr Bruton having to attend the inquiry by video link. As is commonplace in planning inquiries, a RTD on planning obligations was included in the draft agenda. It is customary that a solicitor acting for the Appellant and Council attend. It is also not unusual for there to be contributions from interested parties.

51. PK was only provided with a copy of the draft UU on the 17 November and submitted a list of questions on the 21 November. The Appellant's solicitor duly responded on 24 November. I can see nothing unusual or unreasonable in that timeline. Clearly the R6 could have commented earlier given the draft UU was available as early as March 2025. However, PK was not a formal party at that stage and was only added to the email circulation list at a relatively late stage. I am not therefore persuaded that the R6's conduct in relation to the UU was unreasonable.

Other Matters

52. The Appellant has suggested that some of the R6's submissions may have been aided by the use of AI. The Inspectorate's 'Rule 6 Guide' advises that "*If you use AI to create or alter any part of your documents, information, or data, you should tell us that you have done this when you provide the material to us*" and directs readers to the 6 September 2024 Guidance on "Use of artificial intelligence in casework evidence".

53. The R6 has not commented on this matter in its Costs Response, something I would have expected particularly if the allegation was false. Having read the R6's SoC, I can appreciate why concerns have arisen. It is not just the detail, scope and lengthy citation of appeal decisions and case law that raises suspicion but also the unusual layout and phraseology. It is very different to anything I have encountered before. No author other than PK is identified, who as far as I am aware, is not a planning professional. One is therefore inevitably drawn to ask how PK could have produced such a document which would have been a significant undertaking even for the most experienced planning consultant.

54. In light of the above, I have serious concerns that the SoC was produced using AI, something which undeclared, would in my view amount to unreasonable behaviour as the Appellant was required to respond to the many points raised. However, on this occasion I have decided to exercise discretion and give the benefit of some substantial doubt to the R6.

Conclusion

55. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the R6's heritage case-creep and the minerals submissions insofar as they related to the MRA. A partial award of costs is therefore warranted.

Costs Order

56. 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 Mr Pank Koria

shall pay to Great Tew Construction LLP, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the R6's heritage case and mineral safeguarding submissions (CD8.25 & ID13.b); such costs to be assessed in the Senior Courts Costs Office if not agreed.

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

D M Young

INSPECTOR