
Costs Decisions

Hearing held on 6 September 2016

Site visit made on 6 September 2016

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

Costs application in relation to Appeal A Ref: APP/D0840/W/16/3147454 Panare Farm, Higher Fraddon, St Columb, Cornwall TR9 6NL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Greener For Life Energy Ltd for a full award of costs against Cornwall Council.
 - The hearing 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 planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
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Costs application in relation to Appeal B Ref: APP/D0840/W/16/3147446 Panare Farm, Higher Fraddon, St Columb, Cornwall TR9 6NL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Greener For Life Energy Ltd for a full award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against the refusal of planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The application for an award of costs is refused.

The submissions for Greener For Life Energy Ltd

Appeal A

2. The reduction in the height of the secondary digester's dome had been negotiated with the Council's officers and both Committee reports recommended approval of the application. The Council only confirmed 4 days before the Hearing that it had was not mounting a case at appeal against this application. This behaviour was unreasonable and has resulted in the unnecessary costs to the appellant of mounting a case at appeal.

Appeal B

3. The Council's officers including highway/transport officers recommended that permission should be granted because the proposal delivered an improvement with regard to transport movements to the plant, in terms of nature, number
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and effect on residents' amenity. But the Committee refused permission for no good reasons. Such unreasonable behaviour has again resulted in the unnecessary costs to the appellant of mounting a case at appeal.

The response by Cornwall Council

Appeal A

4. The Council responds that the application was deferred from the 19 November 2015 Committee to enable investigations into the formation of a potential new access to the site from the A30. It was again deferred from the 11 February 2016 Committee to carefully consider conditions and hopefully agree them with the applicant, but the applicant declined to discuss alternative conditions. Nonetheless a report was prepared in advance of the 7 April 2016 Committee but the application could not be determined because the applicant had appealed in the interim. If the appeal had not been made the application would have been approved with the conditions indicated in the report.

Appeal B

5. Committee Members are entitled to come to a different decision to officers' recommendations providing their decisions are justified and reasonable. The Council argued at appeal that the application was academic because the plant had not been built in accordance with the original application including as amended by the Non Material Amendments (NMAs) and that it was therefore justified in assessing afresh the anaerobic digester plant and the access to it in accordance with development plan policy.

Reasons

6. Irrespective of the outcome of an appeal, Planning Practice Guidance (PPG) advises that costs may only 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.

Appeal A

7. I do not accept that the appellant only knew 4 days before the Hearing that the application to lower the secondary digester dome was acceptable to the Council because this is clearly stated in the Council's appeal statement dated 29 April 2016.
8. The deferral from the November 2015 Committee was sensible so that the Council could explore with Highways England whether an access could be created directly off the A30, which would have overcome most of the residents' problems with the plant.
9. In view of the breach of several of the conditions attached to the original permission it was not unreasonable of the Council to defer the application from the February 2016 Committee in order to carefully consider the precise wording of the conditions, given the issues raised by neighbouring residents at that Committee meeting. The appellant's response at the Hearing to Cllr Cole's assertion that it had declined to discuss the wording of the proposed conditions following that deferral was unconvincing.
10. The evidence presented by the Council, residents and Cllr Cole points to a lack of urgency on the applicant's part in seeking to resolve problems to residential

neighbours arising from the plant. The Council was obliged to relook at the conditions carefully in view of the significant number and serious nature of residents' continuing objections. In my view if the applicant had been more focussed in trying to resolve such problems it would have been more pro-active in seeking to agree a revised set of conditions with the Council and would have had more confidence that the Council would have been able to issue a new permission with such conditions, obviating the need for the appeal.

11. For these reasons the Council has not behaved unreasonably in relation to this appeal.

Appeal B

12. I have found that the original permission for the plant including as amended by the NMAs was implemented and that the application would not increase HGV trips to and from the plant. However, that does not mean that the Council was unreasonable to argue that it had not been and that development plan policy indicated the application should be refused given the evidence from residents and via the Parsons Brinckerhoff report that the road was unsuitable for the volume of HGVs both in terms of highway safety and residential amenity. Indeed its appeal statement and its submissions at the Hearing clearly set out its substantive arguments in this regard.

13. For these reasons the Council has not behaved unreasonably in relation to this appeal.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Nick Fagan

INSPECTOR