The Planning Inspectorate

Costs Report to the Secretary of State for Communities and Local Government

by Wendy McKay LLB Solicitor (Non-practising)

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

Date: 4 July 2016

Appeals under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 made by

Cuadrilla Bowland Limited

Land at Plumpton Hall Farm, north of Preston New Road, Little Plumpton, Preston, and monitoring sites in a 4km radius of the proposed Preston New Road Exploration Site, near Little Plumpton, Preston, Lancashire

Inquiry held on 9, 10, 11, 12, 16, 17, 18, 19, 23, 25, and 26 February and 2, 3, 4, 8, 9, 10 , 11 and 16 March 2016

Agricultural land that forms part of Plumpton Hall Farm, west of the farm buildings, north of Preston New Road, Preston, Lancashire and monitoring sites in a 4km radius of the proposed Preston New Road Exploration Site, Near Little Plumpton, Preston.

File Refs: APP/Q2371/W/15/3134386 and 3130923

Appeal A, File Ref: APP/Q2371/W/15/3134386
Agricultural land that forms part of Plumpton Hall Farm, west of the farm buildings, north of Preston New Road, Preston, Lancashire

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Cuadrilla Bowland Limited for a full award of costs against Lancashire County Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the construction and operation of a site for drilling up to four exploration wells, hydraulic fracturing of the wells, testing for hydrocarbons, abandonment of the wells and restoration, including provision of an access road and access onto the highway, security fencing, lighting and other uses ancillary to the exploration activities, including the construction of a pipeline and a connection to the gas grid network and associated infrastructure.

Summary of Recommendation: The application for an award of costs be refused.

Appeal B, File Ref: APP/Q2371/W/15/3130923
Monitoring sites in a 4km radius of the proposed Preston New Road Exploration Site, Near Little Plumpton, Preston, Lancashire

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Cuadrilla Bowland Limited for a full award of costs against Lancashire County Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for monitoring works in a 4km radius of the proposed Preston New Road Exploration Site, Near Little Plumpton, Preston.

Summary of Recommendation: The application for a full award of costs be allowed.

The Submissions for the Appellant

1. The Appellant makes applications for costs in respect of two of the four appeals before the Secretary of State, namely, the Preston New Road Exploration Works (PNREW) and the Preston New Road Monitoring Works (PNRMW). The principles are the same in both. As is made clear in the Closing submissions of the Appellant, the appeal should be allowed at Roseacre Wood (RW) and the planning balance is overwhelmingly in the Appellant's favour [CUA/INQ/29]. However it is accepted that the LCC Development Control Committee had evidence before it in respect of perceived transport impacts from the proposal, and therefore the decision as relevant to costs, can be seen to be different from those at Preston New Road (PNR). The Appellant has therefore decided that it is proportionate to apply for costs in respect of the two PNR decisions but has decided not to do so in respect of the RW decision.

2. Planning Practice Guidance (PPG) '*Appeals - The award of costs*' states that the aim of the costs regime is to: "…*encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay*".

3. The guidance goes on to state that costs may be awarded where: (i) a party has behaved unreasonably; and (ii) the unreasonable behaviour has directly caused

another party to incur unnecessary or wasted expense in the appeal process. It is important to note that, in this context, the word 'unreasonable' should be given its ordinary meaning. Case law has confirmed that it is not a *Wednesbury* standard of behaviour (i.e. no reasonable local authority would have made this decision) but rather behaviour will be unreasonable if the local authority fails to substantiate a reason for refusal (*Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774).

4. The PPG under the heading "*What type of behaviour may give rise to a substantive award against a local planning authority ?"* gives the following examples;

- *Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;*
- *Failure to produce evidence to substantiate each reason for refusal;*
- *Vague generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;*
- *Refusing planning permission on a planning ground capable of being dealt with by conditions risk an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.*

Appeal A - Preston New Road Exploration Works

5. Lancashire County Council (LCC) refused this application on two grounds: (1) The development would cause an unacceptable adverse impact on the landscape, arising from the drilling equipment, noise mitigation equipment, storage plant, flare stacks and other associated development. The combined effect would result in an adverse urbanising effect on the open and rural character of the landscape and visual amenity of local residents contrary to policy DM2 Lancashire Minerals and Waste Local Plan and Policy EP11 of the Fylde Local Plan. (2) The development would cause unacceptable noise impact resulting in a detrimental impact on the amenity of local residents which could not be adequately controlled by condition contrary to Policy DM2 of the Lancashire Minerals and Waste Local Plan and Policy EP27 of the Fylde Local Plan [CD 13.1].

6. In respect of noise, at the time that application was considered, 29 June 2015, the Appellant had proposed a night-time noise condition of 39dBA at the nearest dwelling, Staining Wood Cottages. The Appellant made it clear that the imposition of such a condition involved an unreasonable/onerous burden upon it because of the expense and operational difficulty involved but was prepared to accept such a burden in order to secure planning permission and avoid the very great cost and delay of having to appeal.

7. LCC refused permission inter alia on the grounds of noise, despite the fact that its then appointed noise consultants, Jacobs, had advised that 39 dBA at Staining Wood Cottages was an acceptable night time noise level in the light of all the relevant policy [CD 38.15]. Jacobs' advice was as follows: **"3.2 Significance Criteria -** The report details that a noise level of 39dB at night can be achieved at the nearest noise sensitive receptor (Staining Wood Cottage) during drilling operations with the additional mitigation measures detailed in the report. The report references the WHO guideline of 40 dB Lnight, outside and quotes *"The*

LOAEL of night noise, 40 dBLnight, outside can be considered a health based value of the night noised guidelines (NNG) necessary to protect the public, including the most vulnerable groups such as children, the chronically ill and the elderly, from the adverse health effects of night noise." The predicted noise level of 39dB is below the WHO guideline. The predicted noise level of 39dB is also considered to be in accordance with Planning Practice Guidance which advises that: *"For any operations during the period 22.00 – 07.00 noise limits should be set to reduce to a minimum any adverse impacts, without imposing unreasonable burdens on the mineral operator. In any event the noise limit should not exceed 42dB(A) LAeq,1h (free field) at a noise sensitive property".*

8. Jacob's conclusions said; *"…The proposed noise mitigation measures are considered to be practicable, and the claimed noise reductions achieved by each of the measures are based on guidance in International and British standards. With the additional mitigation measures proposed by the applicant, it is considered that efforts have been made to reduce any adverse noise impacts that would arise from the drilling and hydraulic fracturing activities to a minimum. Furthermore, the resulting noise levels from the activities are considered to be in accordance with relevant government guidance"*.

9. Therefore as at the date of the decision, LCC's refusal on the grounds of noise was directly contrary to its own technical and, as will be seen below, legal advice. The decision to refuse planning permission on the grounds of noise was therefore plainly made on an unreasonable basis, where suitable conditions would have enabled the proposed development to go ahead.

10. Further, at the subsequent appeal, where the Appellant argued that 39 dBA was an unreasonable burden, and as such should not be imposed, LCC did not call a witness from Jacobs but, instead, instructed a new noise expert Dr McKenzie from Hayes McKenzie. Dr McKenzie's evidence was that 39dBA would, in his professional opinion, be a reasonable night time noise condition.

11. Therefore there was no reasonable basis to refuse the PNR exploration works application on the ground of noise impact.

12. In respect of landscape impact it is wholly accepted that this involves an element of subjective judgement. However, the refusal on this ground plainly involved preventing development which should clearly be permitted in the light of national policy, and was based on vague and generalised assertions which were not supported by LCC's own evidence.

13. At the date of the refusal, June 2015 the PPG Minerals para 092 stated; "As an emerging form of energy supply, there is a pressing need to establish – through exploratory drilling – whether or not there are sufficient recoverable quantities of unconventional hydrocarbons such as *shale gas and coalbed methane* present to facilitate economically viable full scale production". So the strong national need for the development was clearly stated in national policy at the date of refusal.

14. As is set out in the Closing, PNR is not subject to any national landscape designation and has no special characteristics in terms of local landscape, as assessed against the widely used Guidelines for Landscape and Visual Impact Assessment (3rd ed) (GLVIA). The number of visual receptors is very low. It is close to the urban edge of Blackpool, and has direct access off one of the main routes into Blackpool. The Council's landscape witness (Mr Maslen), (notably not

their landscape officer who had stated that he considered the temporary effects to be acceptable), could not point to any special characteristics of the landscape at PNR which would justify refusal. He had not carried out any visual assessment of individual receptors which would suggest that the landscape officer had wrongly advised the Committee, or that there was any rational basis for refusal.

15. Therefore, for a form of development for which national policy says there is a "pressing need"; which by its very nature involves tall structures which will virtually always have some landscape and visual impact; and where those impacts are very temporary (about 2 years in total from the tall structures), PNR is an excellent site.

16. Further, LCC Development Control Committee was advised by leading counsel, David Manley QC, during the course of their deliberation on the application that: *"3. In the instant case the reality is that LCC's own Specialist Advisory Service has not objected to the proposal and categorises landscape impacts as moderate and without significant effects upon the Coastal Plain Landscape Character Type or the Fylde Landscape Character Area. The Service notes the effects as temporary and reversible and acceptable in landscape terms. The reporting Officer also concludes an absence of unacceptable landscape/visual impacts. I have not seen any evidence that could credibly justify a contrary conclusion - on any view, impacts are highly localised, temporary and reversible*.

5. I am unaware of any objective evidence that can gainsay the above conclusions. While a refusal which is not backed by substantial objective evidence cannot be described as unlawful, it nonetheless can readily be described as unreasonable in planning terms. If a refusal based on DM2 (or any other generalized policy) were to be issued, it is highly likely that the Applicant will appeal. In the absence of clear evidence to gainsay the views of the various consultees (noted above) and the Case Officer, there is a high risk that a costs penalty will be imposed upon the Council." [CD 45.1]

17. It was notable that LCC's planning witness, Mrs Atkinson, had not herself purported to carry out a planning balance by taking into account the national policy support for shale gas exploration.

18. LCC therefore failed to apply national policy and carry out anything that approximated to a reasonable planning balance. It appears instead to have opposed this shale gas application in principle, in plain breach of national policy, and relied on two wholly unreasonable and unsustainable grounds in doing so. This is a case which clearly falls within the costs guidance.

Appeal B - The Preston New Road Monitoring Works

19. LCC refused the Monitoring works application at PNR on the grounds of: "*The proposal is contrary to Policy EP11 of the Fylde Local Plan in that the cumulative effects of the proposal would lead to an industrialisation of the countryside and adversely affect the landscape character of the area."* [CD 6.1]

20. Again, this decision was contrary to the officer's recommendation, including the landscape officer. It was also wholly inconsistent with the decision to grant permission for the RW monitoring works, which LCC must have considered to be acceptable and where the impacts are virtually identical.

21. Mr Maslen, LCC's landscape witness, accepted that the only impacts in issue were the construction impacts (the operational impacts being virtually non-existent).

22. Each monitoring array will take up to four days to construct, with two days of actual construction and one day of set up and moving off site. In practice many will only take two days to construct. Cuadrilla propose to construct four sites at a time, giving a total construction duration of between 40 and 80 days.

23. Mr Maslen and LCC, have tried to suggest that they were not aware that the works took such a short time. But this is plainly incorrect. Cuadrilla has already installed two complete sets of monitoring arrays in relation to the schemes at Becconsall and Anna's Road. Both of these are within LCC's area and in quite close proximity to the sites. There are a series of emails from Cuadrilla to the Council which refer to a construction period of one to two days. In respect of those two arrays, Cuadrilla was not made aware of any objections either before or during their construction or once established. Nor has LCC presented any evidence of landscape issues or other concerns relating to them. [CUA/INQ/16a – 16b]

24. At no stage during LCC's consideration of the application did LCC ask for further information on duration of works or what the works would entail. If LCC had been concerned about impact of construction on fields (i.e. spreading mud etc.) this could have been entirely dealt with by condition.

25. It is unreasonable to the point of *Wednesbury* irrationality, to refuse an application which according to national policy meets a "pressing need", on the basis of a construction impact which lasts a maximum total of 80 days and where the development itself has negligible impact.

The Response by Lancashire County Council

26. A number of general points need first to be made. Firstly, the costs application is resisted in its entirety. Secondly, the submissions in relation to the costs application are to be considered in the context of the final submissions which have already been presented on behalf of LCC. Thirdly, whilst LCC is grateful that no costs application has been made in respect of the Roseacre Woods Exploration Works (RWEW), the Appellant had indicated that it was proportionate not to make such an application implying that such an application might otherwise be justified. A costs application in respect of the RWEW would have been hopeless and no attention should be paid to the question of proportionality in that respect. Fourthly, no issue is taken with what has been said on behalf of the Appellant in relation to the relevant national policy on costs. It is accepted that the *Manchester City Council* case is authority for the proposition set out in the Planning Practice Guidance on costs.

Appeal A - The Preston New Road Exploration works

27. For the PNREW, the Appellant placed reliance upon there being no reasonable basis to refuse the PNREW application. There has been a recitation of the history of the matter including the advice given to the Committee by their officers and Counsel at the time the application was considered. That was then and this is now. If it is concluded that LCC has called substantial evidence to justify its refusal of the application on the grounds of noise impact, there is no necessary link in causal terms between the refusal and the appeal. There is justification at this point in time of the reason for refusal.

28. At the Inquiry, Dr McKenzie gave evidence on behalf of LCC in relation to noise impact and the Appellant has drawn support from his cross-examination response to the effect that 39dBA would in his professional opinion be a reasonable night time noise condition. However, it is necessary to look at his evidence as a whole and the substance of a body of evidence to support the noise objection and not just that response on its own. That evidence includes how to set the LOAEL, the proper role of Planning Policy Guidance Minerals and where BS 5228 fits into the equation. There is a whole body of evidence that was put forward by him in support of the reason for refusal. The focus of paragraph 11 of the costs application is on a particular answer given in cross-examination. That should be looked at in terms of the totality of the evidence and paragraphs 79 and 82 of LCC's closing submissions are relevant [LCC/INQ/7]. The evidence of Dr McKenzie went much further and he said that the LOAEL should be set at 35dB and proposed 37dB in relation to conditions [LCC/4/1].

29. This is not a case where one can say that conditions could have been approved. There are arguments of substance as to the conditions and the noise levels to be set. There is a causational relationship between the first and second reasons for refusal. If it were to be concluded that the noise reason was unjustified but the landscape reason was justified there would still have been an Inquiry and would have had to deal with the question of noise because of the changed position of the Appellant who wants the condition set at 42dB now.

30. On the landscape issue, it is right to acknowledge that there is a measure of subjective judgment in the landscape and visual issues. The Committee was entitled to disagree with the professional advice that was given to it. There is substantial evidence in support of the reason for refusal as provided by the evidence of Mr Maslen who pointed out deficiencies in the Appellant's evidence and provided a body of work which is plainly substantial [LCC/2/2-3]. In relation to paragraph 15 of the costs application, there has been undue reliance placed upon the absence of any national landscape designation to suggest that LCC has behaved unreasonably. The fact that this is not a special landscape is referred to in LCC's closing submissions paragraph 27. LCC points to the emphasis that the GLVIA places on the value of ordinary landscapes.

31. The Appellant also claims that the landscape and visual effects are inevitable with this form of development and the temporary nature of the effects. The inevitability issue is considered in paragraph 34 of LCC's closing submissions. This makes the point that whilst there may be a general argument of that nature that is not a substitute for site specific judgment. In not every case will one be dealing with an open landscape with the emphasis on visual effects across a wide landscape.

32. As regards the advice provided to LCC by Mr Manley QC; that is disagreed with and addresses the matter as it stood at a particular point in time. There is a substantial body of evidence that supports LCC's case. The advice given at that time was in general terms. It is appropriate for Mr Maslen to descend to a greater level of detail in assessing the landscape effect. That evidence was not previously available and has moved matters on. It has not been suggested to witnesses to the Inquiry that the planning balance struck was unreasonable in respect of the landscape issue. Members are entitled to disagree with their officers on such matters. Local impacts can trump a national need case. For

LCC, Mrs Atkins had approached the matter as a question of planning balance even though that is not in her proof of evidence.

Appeal B - The Preston New Road Monitoring Works

33. As regards the Preston New Road Monitoring Works (PNRMW), this matter also falls within the realm of subjective judgment. LCC members were entitled to disagree with the officers within the bounds of reasonableness. There is evidence in support of the reason for refusal from Mr Maslen and this meets the test of substantial.

34. Turning to the relationship between the PNREW and the PNRMW, the stance of the Roseacre Awareness Group that if the exploration appeal fails then the monitoring works appeal should also fail is not the application made by LCC but there is an interrelationship between the monitoring works and the exploration works. If the exploration works are to be refused then there is no "need case" to put into the planning balance for the monitoring works.

35. As regards the distinction made between LCC's approach to the PNRMW and the Roseacre Wood Monitoring Works applications, each case falls to be considered on its own merits. That is a fundamental aspect of planning policy. There are local landscape character areas involved with each descending to a different level of detail. This reinforces the point that each case should be considered on its own merits.

36. On the question of how long the operations would take to install the monitoring arrays, Mr Maslen's approach was based upon his own professional judgement. It was a reasonable professional judgement for him to reach. This is not a 'no evidence' case and reference is made to paragraphs 89 to 91 of the Council's closing submissions.

The Appellant's counter response

37. In relation to both applications, the Appellant's case for costs is made on the basis of an unreasonable refusal of planning permission, so the submissions made by LCC on the causal link case are wrong if the decisions to refuse the applications were unsubstantiated and unreasonable in June 2015. At that time Jacobs had accepted the Appellant's position as being reasonable and this was an unreasonable refusal of planning permission. The Planning Practice Guidance sets out a clear example of refusing planning permission on planning grounds capable of being dealt with by condition. Dr McKenzie's evidence makes no difference to that causal link.

38. On the landscape issue, paragraph 115 of the NPPF is relevant. LCC did not point to any special character of the undesignated landscape and no feature to which material weight could be placed. The Appellant's representative did not question LCC's witness in relation to planning balance as it would not have been appropriate to have used cross-examination as a vehicle for supporting a costs application.

39. On the PNRMW application, the consideration of each case on its own merits is fine if LCC's witness had been able to point to any material differences between the two cases but this was an identical form of development in a similar landscape. LCC's witness could not explain why one application was allowed and the other was not. This is evidence of unreasonableness on the part of LCC.

40. As regards the length of time that Mr Maslen anticipated the works would take, his evidence is that he asked a colleague to advise him on that point. He had no expertise on the topic and accepted in cross-examination that neither he nor any member of LCC had asked the Appellant how long it would take or why it would take longer than other arrays which had been installed.

Inspector's Conclusions

41. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

42. The PPG provides that awards against a local planning authority may either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The Appellant contends that the examples applicable to this case include: (i) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; (ii) failing to produce evidence to substantiate each reason for refusal on appeal; (iii) vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; (iv) refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded that suitable conditions would enable the proposed development to go ahead.

The Preston New Road Exploration Works

The noise reason for refusal

43. The Appellant submits that, in relation to the second reason for refusal which relates to noise, LCC refused the application on an unreasonable basis since suitable conditions would have enabled the proposed development to go ahead.

44. At the time of the consideration of the planning application, LCC had appointed Jacobs as its noise consultant. The Appellant refers to the Jacobs Review of the Regulation 22 Noise submission dated 17 April 2015 [CD 38.15]. That report did indeed conclude that the applicant had made efforts to reduce any adverse noise impacts that would arise from the activities to a minimum and that the resulting noise levels would be in accordance with relevant government guidance. However, that was not the only submission relating to noise before LCC at the time of the consideration of the application. The officer's report to committee [CD 39.3] sets out the various representations and objections relating to noise which had been made including a detailed representation from a specialist noise consultant on behalf of certain local residents. LCC had asked Jacobs to review that representation and other representations on noise [CD 38.18] and the outcome of that review is set out in the report.

45. The Committee report highlights the considerable concern that had been expressed in relation to increases in noise levels associated with the proposed operations by residents, parish councils, interest groups, the Borough Council and LCC's Director of Public Health [CD 39.3]. The Regulation 22 Noise submission proposed additional mitigation measures to be undertaken by the applicant in the

light of those concerns. The officers considered the proposed mitigation to achieve the predicted noise level of 39dB L_{Aeq} might well be regarded as the minimum achievable without undue burden. The report concludes that those additional mitigation measures indicate that efforts had been made to reduce any adverse noise impacts that would arise from the drilling and hydraulic fracturing operations to a minimum and that the resulting noise limits would be in accordance with relevant government guidance.

46. Nevertheless, although at the time of consideration of the application Jacobs and the officers had accepted the Appellant's position as being reasonable, LCC is not bound to accept the advice of its own officers and experts provided it has reasonable grounds for so doing. The Jacobs report was not the only expert evidence before LCC at that time. There was criticism of the noise mitigation proposed made by others including PNRAG and residents. The representations of local residents included a report from a specialist noise consultant. Jacobs had considered that expert report and the officer's report covered the arguments raised. Nonetheless, there was an expert opinion to the contrary that councillors had before them when the application was considered by them. The assessment of the mitigation measures proposed in the light of relevant guidance and the available evidence on predicted changes in noise levels are matters of planning judgment.

47. The totality of the evidence before LCC on the noise issue did not all lead to one inevitable conclusion. In my view, notwithstanding the guidance provided by LCC's own experts, there was sufficient and reasonable room for a balanced judgment to be made as to whether the noise generated by the development, and hence the impact upon people living nearby, could be satisfactorily controlled by the planning conditions then being proposed. There remained arguments of substance as to the conditions and the noise levels to be set. It was not therefore unreasonable for LCC to take the stance that it did at the time of consideration of the application and refuse planning permission on that ground.

48. The Appellants also refer to Dr McKenzie's cross-examination response to the effect that 39dBA would in his professional opinion be a reasonable night-time noise condition. However, I concur with LCC that it is necessary to look at his evidence as a whole and the substance of a body of evidence to support the noise objection and not just that response on its own. The evidence of Dr McKenzie did indeed go much further. I am satisfied that LCC produced substantial evidence to support this reason for refusal on appeal.

The landscape reason for refusal

49. On the landscape issue, the Appellant submits that the refusal on this ground plainly involved preventing development which should clearly be permitted in the light of national policy and on the basis of vague and generalised assertions which were not supported by LCC's own evidence.

50. Nevertheless, the Appellant acknowledges that there is a measure of subjective judgement in the landscape and visual issues. LCC was entitled to disagree with the professional advice that was given to it, provided it had reasonable planning grounds to support that course of action.

51. The Appellant draws support from the PPG Minerals which provided national guidance at that time in relation to the need for exploratory works. A reference

to this part of the guidance was included in the report to committee and that was obviously a factor that needed to be weighed in the overall balance of considerations. However, I do not consider that national policy at that time indicated that this development should clearly be permitted in this particular location. There were other material considerations, including landscape impact, to be taken into account.

52. LCC had before it details of the ES and further information. The assessment concluded that given the undulating and open nature of the landscape, the development would have some significant landscape impacts but only for a limited period and, in the main, restricted to locations near the site. The report to committee concluded that the proposal would generate significant and localised landscape and visual impacts which would be unavoidable due to the nature and duration of the proposal. Since the landscape change would not be of a permanent nature, the development was considered acceptable in terms of landscape impact.

53. The advice provided to LCC by Mr Manley QC, highlights the assessment of LCC's specialist landscape advisers and planning officers. It draws LCC's attention to the need to provide clear evidence to support a different approach and it compared the views of the various consultees and the case officer. It does not follow that LCC was bound to accept the opinion of Mr Manley QC and allow the application but any refusal contrary to that advice had to be substantiated on appeal and amount to more than vague, generalised or inaccurate assertions.

54. I consider that LCC has produced substantial evidence in support of this reason for refusal on appeal. The evidence of LCC's professional landscape witness, Mr Maslen, provided a detailed analysis of the landscape and visual issues and pointed out deficiencies in the Appellant's evidence and assessment.

55. The Appellant draws support from para 115 of the NPPF in relation to the landscape issue and complains that the Council did not point to any special character of the undesignated landscape and no feature to which material weight could be placed. Para 115 attaches the highest status of protection in relation to landscape and scenic beauty to National Parks, the Broads and Areas of Outstanding Natural Beauty. The appeal site does not fall within any of those categories of landscape designation. However, that does not mean that no weight should be afforded to the protection of other landscape areas. The fact that the site does not fall within any national landscape designation does not inevitably lead to a finding that LCC has behaved unreasonably in seeking to protect a landscape that is of a lower status in the landscape hierarchy. The GLVIA, for example, places emphasis on value attaching to ordinary landscapes.

56. The Appellant has also drawn support from the 'inevitability' argument. In effect, that such development by its very nature with the introduction of drilling and fracturing rigs and equipment cannot avoid having an impact in landscape and visual terms on a rural site. However, it is also the case that the actual impact will vary to a degree from site to site and some landscapes will be better able to accommodate such development than others. The balance of the considerations will be different for different sites. I consider that LCC was entitled to have regard to the particular impact upon this site and its open nature. I do not find LCC's refusal of the application on landscape grounds to have been unreasonable.

Overall considerations

57. The Appellant submits that the LCC failed to apply national policy and carry out anything that approximated to a reasonable planning balance. It contends that they appear instead to have opposed this shale gas application in principle, in plain breach of national policy, and relied on two wholly unreasonable and unstainable grounds in doing so.

58. As is evident from my decision on the appeal, I do not agree with LCC as to the weight to be afforded to all its evidence, nor do I accept all of its submissions. Nevertheless, I find that LCC produced relevant and extensive evidence in support of its case. These were not vague, generalised or inaccurate assertions designed to obstruct the grant of permission that were based on an 'in principle' objection. There has been an objective analysis of the potential impacts, and national policy has not been disregarded in the overall assessment made by LCC. I am satisfied that it did not act unreasonably in refusing the PNREW application.

59. The purpose of the costs application process is to decide whether or not an award of costs in respect of the appeal is justified on the available evidence in a particular case. I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has not been demonstrated. There is no justification for an award of costs being made against LCC either on procedural or substantive grounds in respect of the PNREW.

Preston New Road Monitoring Works

60. The decision to refuse the PNRMW application was also made contrary to the officer's recommendation, including the landscape officer. The advice given by the landscape specialist advisory service was to the effect that due to their small scale and understated appearance the proposed temporary surface and buried arrays would have only localised and very minor landscape and visual effects. In addition, there would be on average a separate distance of about 0.5km between them which would be far enough to significantly mitigate any cumulative effects.

61. The landscape considerations applicable to the proposed development involve an element of subjective judgement. LCC members were entitled to disagree with the officers in their assessment of that topic provided their judgement remained within the bounds of reasonableness having regard to relevant development plan and national policies.

62. The sole reason for refusal states that the "…*cumulative effects of the proposal would lead to an industrialisation of the countryside and adversely affect the landscape character of the area…".* At the Inquiry, Mr Maslen explained that the only impacts that were in issue were the impacts that would arise during the construction of the monitoring works and that the Council's objection did not relate to the operational phase once the monitoring works were in situ.

63. The officer's report to committee states that the array stations are proposed to be drilled by a truck mounted drilling rig utilising an area of about 20m x 20m and would take about four days to complete – one day to mobilise, two days to install and one day to demobilise. In contrast, the evidence of Mr Maslen was to the effect that all the activities involved in the construction of each of the buried array sites (from initial set up to final erection of the site fence) would take two weeks.

64. The likely period for the construction of each array site was a matter that was in issue between the parties at the Inquiry. The Appellant submitted that the work would take about four days per site and in terms of the drilling work only one to two days. The Appellant intends to undertake work on four sites at a time. This gives a total duration of between 40 and 80 days for the construction period.

65. Mr Maslen conceded in cross-examination that, were each site to take only four days to complete from start to finish, that would be a transient period. He also accepted that a very short-term overall construction period would be involved were there to be a four day construction period per site which would then give a total 80 day construction period on the assumption that four sites would be under construction at any one time.

66. However, he had approached matters on a different basis, namely, that with a likely two week total construction period for each site and programmed completion of all sites within a five month period, a larger number of sites than four would be in construction at any one time. He gave the figure of eight sites in his proof of evidence but considered that, in reality, there might be more still.

67. In support of its case, LCC submitted e-mail correspondence from the Appellant dated 13 August 2012 which deals with 20 array sites at Becconsall and which shows simply that the drilling component of the operation was completed in a period of one to two days [LCC/INQ/5]. The point was made that the overall estimate of Mr Maslen covered the entirety of the construction operation and not just the drilling phase.

68. In response, the Appellant submitted e-mail correspondence regarding monitoring works time frames, April to July 2012, [CUA/INQ/16b]. The e-mail dated 5 July 2012 from Phil Mason which forms part of that correspondence provides details of two test holes, each of which took four days to drill. These monitoring arrays were installed under permitted development rights and, as requested by LCC, the Appellant provided the commencement and completion date for the drilling of the two boreholes. The information provided by the Appellant relates to the drilling phase, rather than the total duration of the works [CUA/INQ/16b]. However, it indicates that such information could be requested and obtained, if required.

69. Mr Maslen conceded that he had no particular expertise on the construction duration issue and he had been advised by a colleague on that point. Neither he, nor any member of LCC, had sought further information from the Appellant in relation to the duration of the construction period or questioned whether it would take it longer than other arrays which had already been installed in the area. Had there been any genuine concern at that time as regards the likely duration of the works then further reassurance could easily have been sought from the Appellant and consideration given to the scope for controlling this aspect of the development by means of planning conditions.

70. The Appellant also points to the inconsistency with the decision to grant permission for the Roseacre Wood monitoring works, which LCC must have considered to be acceptable and where the impacts are virtually identical. LCC relies upon the principle of each case being considered on its own merits and points to there being local landscape character areas involved with each descending to a different level of detail. However, it is telling that LCC's witness could not readily explain why one application was allowed and the other was not.

No plausible explanation was provided as to why one monitoring application should have been treated differently from the other given the similarities in the nature of the development involved.

71. I conclude that the reason for refusal of the PNRMW was no more than a vague, generalised and inaccurate assertion about the proposal's impact that was unsupported by any objective analysis. The reason for refusal was not supported by substantial evidence on appeal. The refusal of that application for the reason given amounts to unreasonable behaviour on the part of LCC.

Conclusions

Appeal A - PNREW

72. I consider that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Appeal B - PNRMW

73. I consider that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and I therefore conclude that a full award of costs is justified.

Recommendations

Appeal A- PNREW

74. I recommend that the application for an award of costs be refused.

Appeal B - PNRMW

75. I recommend that the application for a full award of costs be allowed.

Wendy McKay

INSPECTOR