
Costs Decision

Hearing Held on 7 February 2018

Site visit made on 7 February 2018

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 16th February 2018

Costs application in relation to Appeal Ref: APP/D0840/W/17/3180940 Penare 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 Fraddon Biogas Ltd for a [partial] [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 to grant approval to details required by a condition of a planning permission.
-

Decision

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

The submissions for Fraddon Biogas Ltd

2. The applicant company alleges that Cornwall has adopted unreasonable behaviour in that the applicant believes it complied fully with Condition 14 attached to planning permission Ref APP/D0840/W/16/3147454 and APP/D0840/W/16/3147454 granted on appeal on 28 September 2016 ('the 2016 appeals') when it submitted such details to the Council. Neither the Council nor the local highway authority objected to the vehicle dimensions submitted and there was sufficient technical evidence available to demonstrate that approval should be given. The Council on the other hand has not provided any evidence to substantiate the withholding of approval to details submitted.
3. Instead, the Council sought to apply a limit to the amount of vehicle types that should be permitted, which was not based on evidence. Further, the Council appeared to want the applicant company to commit to a specific vehicle type ('the Duoliner') to be used for a minimum amount of movements out of the permitted 35 weekly HGV movements.
4. The applicant maintains that the condition does not seek to limit the amount of movements within each specific class of HGV. The applicant is unable to commit to using a specific vehicle brand as flexibility is necessary over the lifetime of the plant.

The response by Cornwall Council

5. The Council considers it has provided substantial evidence in defence of its position and that the 2016 appeals decision should be read as a whole with particular reference to paragraphs 22 and 29, which sets the scene for the

Council's approach ever since. The planning history of the site is also considered central to its stance. The Council also believes that the withholding of approval has not inhibited the implementation of the planning permission granted on appeal. This appeal was changed from written representations procedure to a Hearing on the decision of the Planning Inspectorate.

Reasons

6. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs can be awarded against a party who has behaved unreasonably and thereby caused the costs applicant to incur unnecessary expense in the appeal process.
7. The applicants' case, although not articulated formally, appears substantive in nature. For substantive matters, the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Importantly, any unnecessary costs identified must relate to the appeal process.
8. It is acknowledged that the local highway authority did not object to the details submitted to the Council. However, from what I heard at the Hearing and indeed supported by what I saw during my site visit, the lane is as the previous Inspector thought - "manifestly unsuitable to accommodate any increase in HGV numbers..." The evidence presented to my Inspector colleague in 2016 suggested that the applicant company would be using the Duoliner as its main vehicle. Indeed, the Parish Council and local residents took some comfort from the Inspector's comments in respect of the use of this vehicle type at paragraph 22 of his decision, which in my view and, despite his insistence on controlling the numbers of HGVs overall, formed the basis for his support in principle to the proposals contained in the 2016 appeals. I can fully understand why the Council sought to negotiate a firm commitment to the use of the Duoliner, particularly as further applications could be sought at later stages in the life of the plant to vary the vehicle type.
9. At the Hearing, I heard that there have been several reported incidents of contractors working for the applicant company disregarding the agreed protocol in the Vehicle Management Policy. However, I was also told that the applicant company continues to provide the requisite information in its reporting regime to the Parish Council and that it wishes to work closely with the community to iron out difficulties.
10. I do not believe that the Council's stance has been unreasonable as such. It has responded to complaints received from the local community, the local councillor and the Parish Council. I believe the previous Inspector in framing condition 14 did have in his mind the use of the Duoliner - indeed he saw during his site visit (as I did) the use of this vehicle in operation. I have no doubt whatsoever that the appellant at the 2016 appeals made great play about its benefits. I can therefore fully understand why the Council has sought to negotiate its use as the primary vehicle. I find no criticism in that as the vehicle, by the applicant's own admission, is more efficient, quieter and has greater manoeuvrability. I was impressed by a particular comment from a local resident who whilst acknowledging the swept path analysis undertaken by the applicant's consultants, nevertheless pointed out that the HGVs would need to utilise much of the carriageway width with some of the larger HGVs also

needing to 'oversail' the adopted carriageway to negotiate the 90 degree bend. I saw some evidence of this during my site visit with rutting of grass verges at several points along the highway.

11. Whilst the local highway authority did not raise objection on highway grounds, the local planning authority is charged with considering wider amenity and convenience issues in addition to technical highway matters. I have no doubt that pedestrians in particular have to be particularly watchful of traffic using this lane. I do not believe that the Council can be criticised in the stance that it has adopted, which was a precautionary stance in all respects. Evidence is not confined to hard technical evidence; planning is bound by both objective and subjective assessments.

Conclusion

12. Therefore, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not therefore justified.

Gareth W Thomas

INSPECTOR