



Costs Decision

Inquiry Held on 5 - 7 November 2019

Site visit made on 7 November 2019

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2020

Costs application in relation to Appeal Ref: APP/Y2003/W/19/3221694 Lodge Farm, Clapp Gate, Appleby, Scunthorpe DN15 0DB

- 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 Egdon Resources UK Limited for a full award of costs against North Lincolnshire Council.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for the retention of the Wressle-1 wellsite and access track for the production of hydrocarbons, together with an extension of the site by 0.12ha for the installation of additional security facilities; site reconfiguration to facilitate the installation of a new impermeable membrane, French drain and surface water interceptor; construction of a new bund, tanker loading plinth and internal roadway system; installation of an additional groundwater monitoring borehole; well operation; installation of production facilities and equipment; installation of gas engine and electrical grid connection; oil and gas production for a temporary period of 15 years; and restoration to
 - arable land.
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Decision

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

Background

2. In 2018 two proposals which were similar in principle to the current proposal were dismissed on appeal. Following those decisions the scheme was amended and further technical information was supplied by the current appellant. This led to a new application to the Council in July 2018, which was recommended for approval by officers, but which was refused by the Council in November 2018. This decision was appealed in February 2019 and was considered at the 2019 Inquiry.
3. Before the Council refused permission for the revised proposal a report was submitted to the Council by its consultants - who had appeared for the Council at the 2018 Inquiry in opposition to the previous proposals. This report concluded that the main weaknesses identified by the previous Inspector had been addressed or could be addressed by planning conditions.
4. Following a special Planning Committee meeting on 17 July 2019 the Council advised (22 July 2019) that it would not be presenting evidence at the Inquiry and was withdrawing its case in respect of the appeal. The authority considered that the proposal met all relevant development plan policies. The

authority took no part in the Inquiry other than to assist on the matter of conditions.

The submissions for Egdon Resources UK Limited

5. Prior to the Inquiry, the appellant gave notice that it was seeking a full award of costs from the Council, on the basis that the appellant had been put to unnecessary and wasted expense due to the unreasonable behaviour of the authority.
6. The officers' recommendation was clear and unequivocal, and based on a thorough examination of the proposed development and its effects in the light of relevant policy and the available evidence. Importantly, the evidence addressed in the officer's report included specific advice commissioned by the Council from its independent expert advisers on the issues which subsequently formed the basis of the reason for refusal. Their advice was that the application and supporting material had either addressed the concerns identified in the previous application and/or could be addressed by planning conditions to secure the necessary protective and mitigation measures. The advisers offered to explain the implications of their advice to officers or members if required, but this was not sought.
7. Following the lodging of the appeal, the Council provided a Statement of Case in April 2019, in which its position was that it would defend its reason for refusal and would present expert evidence to demonstrate that the Council's decision was justified.
8. The appellant did not consider that the Council's Statement of Case met most, if not all of the Planning Inspectorate's Procedural Guide, and contacted the Inspectorate. The Inspectorate wrote to the Council on the same day, asking for a response as a matter of urgency. Despite being chased for a response on numerous occasions, it took the Council almost two months to provide a formal response. During this time, the Appellant had no option but to continue preparing for the Inquiry.
9. Finally, on the 22 July 2019, the Council confirmed that following consideration of the appeal during a private session of the Planning Committee, it would "..not be presenting evidence at the Public Inquiry.." and "..that North Lincolnshire Council withdraws its case in respect of this appeal."
10. The Council no longer has any objection to the development and has agreed that planning permission should be granted.
11. The Council's revised position is welcome, but it comes 8 months after the planning application was refused and 3 months after the Council issued its Statement of Case stating it would be defending its reason for refusal. During this time the Appellant has incurred significant costs in preparing for the inquiry. Despite the Council withdrawing its case, the appellant has had to prepare for and attend the Inquiry.
12. All the costs incurred by the Appellant in submitting the appeal, preparing for and attending the Inquiry, could have been avoided had the Council properly considered the planning application. If it had done so, and in light of the Council's current position, the planning application would not have been refused and there would have been no need for the appeal.

13. The Council's behaviour constitutes unreasonable behaviour as set out in the relevant parts of the Planning Practice Guidance (PPG).

The response by North Lincolnshire Council

14. By letter dated 11 November 2019 the Council stated that it did not resist the application for costs.

Reasons

15. 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.
16. The Council's professional officers and its consultants recommended that planning permission should be granted, subject to conditions. The reason for refusal was generalised and, as it subsequently transpired, unsupported by any objective analysis. The aim of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny. The authority did not exercise its functions in this way.
17. This unreasonable behaviour was compounded by the subsequent delay by the authority. The Council's Statement of Case was inadequate, and there was a further delay of two months. This delay was unreasonable and continued to contribute to the appellant's unnecessary expense.
18. After the delay the authority finally withdrew its case and accepted that conditional planning permission should be granted. There was never any evidence to substantiate the refusal or explain that it was a reasonable response to the application. PPG advises that failure to substantiate reasons for refusal is unreasonable and that one example of behaviour that may give rise to a procedural award against a local planning authority is withdrawal of a reason for refusal (in this case the sole reason). It is unreasonable to refuse planning permission where objections are capable of being dealt with by conditions.
19. Overall, as accepted by the Council, the authority has delayed a development which should clearly be permitted, having regard to the common ground now agreed between the parties as to the development plan, national policy and other material considerations. This is entirely at odds with the advice in the PPG and constitutes unreasonable behaviour.
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

21. 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 North Lincolnshire Council shall pay to Egdon Resources UK Limited, the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.

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

P. J. G. Ware

Inspector