



Costs Decision

Site visit made on 28 October 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 13 February 2020

Costs application in relation to Appeal Ref: APP/E2001/W/19/3234626 Old Peat Works, off Reading Gate, Swinefleet, East Riding DN14 8DT

- 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 Mr Paul Whyatt (4 Recycling Ltd) for a full award of costs against East Riding of Yorkshire Council.
- The appeal was against the refusal of planning permission for the proposed change of use of land and buildings at The Old Peat Works, Swinefleet to a recycling facility including the erection of tanks and containment bays for biosolids treatment, waste treatment and waste storage facility with the final product used as soil improvers and fertiliser replacement.

Decision

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

Reasons

2. Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, 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.
3. The appellant's application is made on both substantive and procedural grounds; the former on the basis that the Council have not substantiated through the submission of evidence how or why the proposal would cause harm to the living conditions of local residents or the quiet rural ambience of the surrounding area, instead relying upon vague, generalised and unsubstantiated assertions regarding the impact of the proposal. With regard to the latter, the application refers to procedural matters and conduct during consideration of the proposal at the Council's Planning Committee meeting and as a result of the introduction of development plan policies not cited on the reason for refusal.
4. The Guidance also advises that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. The application was refused on a single ground, contrary to the recommendation of the Council's officers. The Council's case, as set out in the Council's Statement of Case, is brief and to the point. It sets out the Council's case, but not to any significant degree of detail beyond that set out in the sole reason for refusal.
5. In itself, I do not find this to be critical. I have noted the recommendation of officers and accept that, in assessing the matters that formed the reason for

- refusal, the decision is a matter of judgement. In this respect, Members were entitled reach a different conclusion to that put forward by officers.
6. However, the Council's case at appeal does not challenge the technical detail set out by the appellant in respect of traffic generation. Nor does it seek to substantiate how the level of traffic would cause harm to the ambience of the quiet rural location referred to in the refusal reason, instead just stating that it would.
 7. There are, I accept, houses located along Reading Gate, more widely on the A161 in Swinefleet, Crowle, Eastoft and, further afield, on the route into and through Goole. There would be an increase in vehicle and HGV movements along the A161 and Reading Gate compared with the existing situation. However, the Council has not challenged the appellant's conclusions regarding the uplift in vehicle and HGV movements in these areas with compelling evidence of how this would cause harm to the living conditions of residents in those areas. Nor have the Council sought to address the fallback position advanced by the appellant in terms of the previous use of the site and the lawful use established by way of a certificate of lawful development issued in 2005¹, and how or why the current proposal would lead to unacceptable issues with regard traffic generation and living conditions.
 8. To my mind, these are exactly the sort of circumstances, in terms of vague or generalised assertions, that the Guidance advises may lead to an award of costs against a local planning authority on substantive grounds. Whilst Members are entitled to exercise judgement and reach a different conclusion to that reached by their officers, a case has to be made for the contrary view. Beyond these assertions, the Council has not attempted to challenge or dispute the appellant's evidence and it has, I conclude, relied upon these assertions without any objective analysis to support such conclusions or to make a compelling case for that contrary view.
 9. Whilst I have concluded that the appeal falls on a procedural ground in relation to the absence of an executed agreement to mitigate the impact of the traffic generation anticipated to arise from the proposal, I conclude that on substantive grounds the Council has acted unreasonable and, in so doing, has caused the appellant to incur unnecessary cost.
 10. On procedural grounds, I am satisfied that the Council have adhered to the timescales set out in relation to the appeal and that reference to Joint Waste Local Plan (JWLP) policy W23 in their Statement of Case was not the introduction of fresh evidence. Indeed, the appellant has confirmed that JWLP policy W23 was considered in both the planning application 'Supporting Statement' and the appeal 'Statement of Case'. Even if I were to find that the Council's references to JWLP policy W23 in their statement of case did amount to unreasonable behaviour, I do not consider that the appellant has incurred additional expense because of the Council's reference to it in their statement of case.
 11. Whether or not the Council have challenged the appellant's recollection of the Planning Committee's consideration of the appeal proposal, the conduct of Members during the course of a planning committee meeting does not fall before me in regard to an application for an award of costs. Those concerns

¹ LPA Ref No: 05/06145/CLP

are ones which I invite the appellant and Council to resolve between them and thus, for the reasons I have set out, I conclude that on procedural grounds this application fails.

Costs Order

12. 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 the East Riding of Yorkshire Council shall pay to Mr Paul Whyatt (4 Recycling Ltd), the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to the East Riding of Yorkshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Graeme Robbie

INSPECTOR