



Costs Decision

Site visit made on 28 January 2020

by P Mileham BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th April 2020

Costs application in relation to Appeal Ref: APP/X2600/W/19/3225900 Aldeby Landfill Site - Oaklands Gravel Pit, Common Road, Aldeby NR34 0BL

- 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 FCC Environment for a full award of costs against Norfolk County Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the variation of condition 4 of permission D/7/1987/3439 to enable retention of the access road until 8 July 2018, in parallel with the expiry of the landfill site permission without complying with condition attached to planning permission Ref C/7/2013/7021.
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Decision

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

Reasons

2. The Planning Practice Guidance (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.
3. The applicant considers that the application should have been validated by the Council as it provided sufficient information as required by Article 34(4) of the Town and Country Planning (Development Management Procedure)(England) Order (2015). The applicant provided a detailed assessment of the requirements of Article 34 which illustrate how the submitted information meets the requirements in the aforementioned Article.
4. The PPG advises that the behaviour of the LPA in the planning application period can be taken into account. As the application was not validated and therefore not determined, it is necessary to take into consideration behaviour during this process as to whether costs should be awarded. Having reviewed the submitted material and the parties' evidence I consider in this instance the Council should have validated the application. This is due to the Council's conflation between the requirements necessary for validating an application, and the merits of the proposal itself and the supporting information. The consideration of the contents of the Planning Statement clearly forms part of the application in this case as it was necessary to consider this information in order to ascertain the reasons sought for not complying with the specified condition. The appellant clearly indicated in its planning statement which plans the application was being made against and as has been the case in the main appeal decision, the proposal can be determined according to those plans.

Therefore, the expanded red-line boundary was only a suggestion, and the Council could have identified the plans against which the application was validated. This would have allowed the application to have been validated and subsequently considered.

5. The Council also refused to validate the application as it took the view that an applicant for planning permission cannot apply to add conditions to an existing permission. However, the variation of condition application was made under Section 73 of the Town and Country Planning Act (1990) ('the Act'), and although Section 73 is clear on what can be done, it nonetheless does not expressly restrict such ability. Furthermore, the power to impose conditions ultimately falls to the decision-maker rather than an applicant, and as a result, the Council could have imposed alternative, amended or further conditions in order to make the development acceptable.
6. The appellant prepared a legal opinion to assess the Council's opinion on the validation of the application and this was offered to the Council. However, the parties evidence indicates that this was refused, and the Council considered it was not from a fully independent sources as it was commissioned by the applicant. Legal opinions are normally provided by suitably qualified persons, acting in accordance with their relevant code of conduct. As such, the opinion may have contained pertinent advice in relation to the validation of the application. As a result, I consider the Council's decision not to accept, review and consider the legal opinion that was offered may have affected its decision on whether to validate the application. I consider this amounted to unreasonable behaviour as this evidence should have been reviewed either by the Council or independently by a suitably qualified person.
7. The Council has indicated that it did not have sufficient time following the submission of the application before the expiry of the permission that was sought to be varied to enable the applicant to amend the disputed red line boundary of the application. Whilst it may have been good practice for the applicant to have submitted the application further in advance of the previous permission's expiry, this is a matter of convention rather than a requirement of legislation albeit considering the extensive history of the site this could have been more timely. Therefore, this may have presented the Council with some difficulty in providing its reasons to the applicant. However, this should not have otherwise constituted a reason for not validating the application.
8. Notwithstanding the above, even if the Council had validated the application, the appellant has indicated that there was some ambiguity and inconsistency within its Planning Statement as to the status of the amended drawings and accompanying material. As such, I find that even if the Council had validated the application, the concerns it had may not have been able to be overcome during determination and as a result, an appeal may still have been made. However, this may have been against a refusal of Planning Permission rather than for non-determination/ non-validation. The Council as decision-maker was entitled to come to a different view on the merits of the application, and I find there is no evidence to suggest that that the Council has unreasonably delayed development that should have otherwise been permitted.
9. Having regard to the Council's behaviour in failing to review the appellant's legal opinion, this may have altered the Council's view as to whether the application should have been validated. As such, the appellant has clearly been

put to some additional expense due to the need to provide evidence in respect of the matters relating to the non-validation of the application as a result of the Council's error in its appeal statement that it would not otherwise have been required to do.

10. Therefore, I consider that the Council's errors and subsequent unreasonable behaviour has resulted in the application going to some wasted expense in respect of the need to prepare evidence to rebut the Council's reasons for the non-validation notice.

Conclusion

11. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a partial award of costs is justified.

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 Norfolk County Council shall pay to FCC Environment, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the non-validation notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Norfolk County 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 Mileham

INSPECTOR