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## Costs Decisions

Inquiry Held on 8, 10 and 18 September 2020

Site visit made on 15 September 2020

**by Roy Merrett Bsc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25<sup>th</sup> November 2020

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### Cost applications in relation to:

**Appeal A: APP/M1900/W/19/3233985;**

**Appeal B: APP/M1900/W/19/3233992;**

**Appeal C: APP/M1900/W/19/3234026;**

**Appeal D: APP/M1900/W/19/3234036**

**Blackbirds Farm, Blackbirds Lane, Aldenham WD25 8BS**

- The applications were 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 applications were made by Mr Becker for a partial award of costs against A F Pinkerton and Partners (**Costs application 1**) and by A F Pinkerton and Partners for a full or partial award of costs against Mr Becker (**Costs application 2**).
- The inquiry was in connection with appeals against the grant subject to conditions of planning permission for "Section 73 Application to Increase the Maximum Throughput of Green Waste from 8,000 to 23,500 tonnes per annum"; "Section 73 Application to vary the wording of Condition 6 of planning permission 0/1097-09 relating to the number of HGV movements"; "Application for the continued use of an existing maturation pad (Works Field 1) for the processing of green waste and its conversion into compost for use as a fertilizer on land farmed by AF Pinkerton & Partners from its hub"; "Application for the construction of two maturation pads (Works Field 2 and Works Field 3) to be used for the processing of green waste and its conversion into compost together with the creation of a lagoon to hold water draining from all three pads in Works Field and peripheral landscaping to include a screen bund".

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### Costs application 1

#### Decision

1. The application for a partial award of costs is refused.

#### Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)<sup>1</sup> advises that 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.
3. The application for costs is made on procedural and substantive grounds. Mr Becker states that in procedural terms the appellant has failed to co-operate and has concealed relevant evidence and in substantive terms that there has

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<sup>1</sup> Reference ID: 16-030-20140306

been inadequate supporting evidence to justify the extent of development sought.

4. Specifically, the areas of challenge relate firstly to a lack of adequate information regarding the late inclusion of land outside Blackbirds Farm and the location of grassland areas within the farm so as to justify the agricultural need element of the case; secondly, to vehicle movements associated with the transportation on the highway network of matured compost.
5. It is the case that at a late stage in the process the nature and extent of the land bank on which the appellant relied to make the need case was subject to change following the inclusion of the so-called 'Munden Estate' land. However, I found in my main decision the explanation that the physical scale of farming enterprises may change over time in response to market characteristics to be a plausible one. It is not alleged that the inclusion of the Munden Estate as an area being farmed, under contract, from the Blackbirds Farm hub is based on an untruth.
6. The appellant's evidence included the location of the land bank relied upon for the green waste need calculation and the fertility classification of the soil in question. Whilst the precise location of specific crops and grassland within the land bank has not been revealed in evidence, I am not persuaded that there would have been any significant value in doing so. Crop locations may be subject to change according to growing rotations. The breakdown of the land bank area by soil fertility level has been disclosed and is unchallenged, and I have found the assumptions made by Dr Gibbs regarding the proportion of crops grown within those areas to be reasonable.
7. With regard to vehicle movements associated with finished compost, I have concluded in the main decision that the fallback position of importing bought-in compost, in the absence of a green waste operation, and which would be part and parcel of the agricultural use of the land, means that it would be unreasonable to exercise planning control over this part of the business.
8. I do not therefore find that the appellant has failed to provide sufficient evidence to support their case or that they have concealed any evidence that has prejudiced the case of the Rule 6 party.
9. I therefore find that unreasonable behaviour, either in procedural or substantive terms, based on the limited information about the late inclusion of additional land and the lack of information regarding the location of grassland and compost vehicle movements, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

## **Costs application 2**

### **Decision**

10. The application for a full or partial award of costs is refused.

### **Reasons**

11. Paragraph 056 of the PPG indicates that under the Inquiry procedure rules, Rule 6 parties may be liable to an award of costs if they behave unreasonably.

12. To summarise, the appellant sets out that the Rule 6 party objects to the proposed throughput of waste, despite conceding in evidence that this level of activity was reasonable and credible and would result in no harm; that its objection to vehicle movements was vague, contradicted by the technical evidence of an independent expert and failed to have regard to case law; that its approach to odour was similarly vague and lacking in objective evidence; that a cogent basis for requiring conditions to control the timing of waste turning and the certification of compost was not provided; that the approach of suggesting conditions should be made as restrictive as possible was unreasonable; and that in general terms its case has been changeable and evolutionary, supported by documents submitted only very late in the proceedings.
13. With regard to the question of waste throughput, whilst it was conceded in cross-examination that the volume was a reasonable and credible maximum, not anticipated to result in significant environmental harm and I did not agree with the position taken regarding agricultural need, the Rule 6 party was nevertheless able to set out how they considered that an optimum throughput level would necessitate the importation of less green waste.
14. With regard to vehicle movements I agreed with the parties that the question of early morning green waste related HGV departures from the farm was a material consideration in the appeal. I went on to conclude that it was appropriate to extend the scope of the relevant planning condition to control the timing of such movements. Whilst I did not take the same view with regard to the movement of finished compost, for the reason given in the main decision, this was nevertheless a matter of local concern which was not unreasonable to argue.
15. I did not find sufficient evidence to concur with the Rule 6 party on the significance of odour that would result from the proposal. However this too was a matter of local concern and empirical observations were recorded and correlated with wind direction data to support the case. The role of observation in odour monitoring is set out in air quality technical guidance. The fact that Mr Becker chose not to engage an independent expert on this matter, argued that waste turning should be subject to timing controls and that finished compost should be subject to accreditation were issues not in themselves unreasonable.
16. With regard to the wording of suggested conditions, whilst I agree with the appellant that for the most part this would be excessively restrictive, the Rule 6 party was able to explain the reasoning for the control sought.
17. I am not persuaded that the Rule 6 party case has departed in any significant way from the statement of case within which, for example, there are references to concerns with regard to odour. Neither would I agree that any of the documents submitted to the Inquiry at a late stage served to delay proceedings significantly or prejudice the appellant's case in any way.
18. Finally as to causation, I am satisfied that it was necessary to hold an Inquiry in this case because of the technically complex nature of the matters that were at issue.

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Roy Merrett*

INSPECTOR