



Costs Report to the Secretary of State

by **Mike Robins MSc BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Date **10 March 2022**

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL MADE BY

UKOG (234) LTD

against

SURREY COUNTY COUNCIL

Inquiry Held opened virtually on 27 July 2021

Land South of Dunsfold Road and East of High Loxley Road,
Dunsfold, Surrey

File Ref: APP/B3600/A/21/3268579

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Dunsfold, Surrey

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by UKOG (234) Ltd for a partial award of costs against Surrey County Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the construction, operation and decommissioning of a well site for the exploration and appraisal of hydrocarbon minerals from one exploratory borehole (Loxley-1) and one side-track borehole (Loxley - 1z) for a temporary period of three years involving the siting of plant and equipment, the construction of a new access track, a new highway junction with High Loxley Road, highway improvements at the junction of High Loxley Road and Dunsfold Road and the erection of a boundary fence and entrance gates with restoration to agriculture.

Summary of Recommendation:

The application for a partial award of costs be refused.

Preliminary Matters

1. I have prepared a separate report with a recommendation on the appellant's appeal. Any references to documents are listed in full in that report.

The Submissions for UKOG (234) Ltd

2. The appellant submitted a written application, dated 12 August 2021, CD.J11. The material points are:
3. By reference to paragraphs 047 and 049 of the Planning Practice Guidance¹, the local planning authority are at risk of an award of costs if they behave unreasonably, prevent or delay development, fail to produce evidence to substantiate a reason for refusal, present vague or generalised assertions about impacts or fail to supply information or co-operate with other parties.
4. It was argued that SCC's Committee, when reaching their decision on the highway reason for refusal, had no technical highway evidence to support their position, which was contrary to their own officers, including the Highway Authority (HA), who had carried out their own Road Safety Audit (RSA).
5. In such circumstances, it was incumbent on SCC to substantiate its refusal reason with proper technical evidence. The appellant submitted that the evidence in the appeal was very weak and did not provide a reasonable or properly objective basis to support the reason. The witness had not engaged with SCC HA officers to discuss the road conditions, the RSA or their precautionary approach.
6. There was no technical reasons advanced, just added caution and judgements, and the evidence was flawed, including: concerns about traffic management procedures, when these are not unusual on UK roads; dealing with matters covered by the HA or the Traffic Management Plan; the use of national statistics

¹ ID:10-047/49 20140306

with no statistically rational basis; reliance on a small number of HGV or AILV movements; and finally, reliance on unsubstantiated, anecdotal damage only claims.

7. This, they say, was unreasonable and resulted in wasted expense related to the cost of dealing with the highway reason for refusal.

The Response by Surrey County Council

8. The Council responded in writing, dated 13 August 2021, CD.J12. The material points are:
9. It is well-established that the Planning Committee is not obliged to accept the advice of its officers or their consultees.
10. The reason for refusal was supported by expert evidence, and set out many aspects of the proposed highway arrangements which gave proper cause for concern.
11. SCC's witness explained that the highway arrangements were unusual and that insufficient caution had been applied. The reliance on accident statistics was fully explained and the methodology was not challenged. There was explanation of the disproportionate increase in HGV numbers, and it was reasonable to consider the implications on the hazardous 90 degree bends.
12. Many of the recommendations in the RSA supported SCC's concerns and were not taken up by the appellant. SCC's case at the Inquiry was not in agreement with the highway officers, this is not unreasonable behaviour and the views expressed were both reasonable and substantiated.

Conclusions

13. The Planning Practice Guidance 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.
14. A challenge that a Council has found against the advice of their officers is no basis for an award of costs; what has to be shown is that the Council have not then justified and substantiated their continued defence of that reason.
15. In this case, there was a long period of negotiation with the HA over traffic management at the site. The outcome included among other matters speed restrictions, junction improvements, the use of banksmen, temporary traffic signals and temporary signage. Individually, such elements are not unusual per se, although their intermittent use at one site over a period of up to three years is less common. In particular, the required manoeuvres of the AILVs would be unusual; a three-point turn needing utilisation of an additional minor road off the main carriageway. These are all matters which the initial RSA suggested could be better addressed through provision of an enlarged bellmouth, a circumstance which would appear to be undeliverable at this site.
16. As a consequence, while some of the approaches, in particular traffic signals, are not unusual, they do introduce some matters related to potential non-compliant behaviour, use of parallel routes and added delays, and some aspects of the proposed management are unusual. In such circumstances, I do not consider it unreasonable that SCC members, with their local knowledge, had concerns about

the introduction of such controls on this particular road. While SCC's evidence could have been informed by further discussion with the HA, their witness was fully qualified to assess the implications without such consultation.

17. A further matter relates to the nature of the road. There are recorded statistics of personal injury accidents, which suggest the road is one with a poor record of accidents. That there was considerable local concern, anecdotal reporting of accidents, which were not part of these statistics, is understandable and borne out by HA responses to try to improve the road. Those improvements cannot yet be confirmed as having resolved the issues; this was accepted by the appellant.
18. It was also clear to me that the road alignment, particularly the long straights and sharp bends, would remain a contributory factor for risk, albeit the evidence did not support that accidents were directly attributable to HGVs. Nonetheless, while the national statistics presented by SCC are not typically used in traffic assessments, they are not an invalid approach to assess the nature of the road network comparatively, and are indicative of particular caution being needed here. That HGVs did not feature significantly in the accident record cannot be discounted, but equally, signage restricting HGVs on this stretch of road and the existing limited number of larger HGVs and AILVs do indicate a potential for disparity between past statistics and future risks.
19. Consequently, while my own findings differed to that of SCC on this matter, I do not consider their approach was unreasonable in arguing matters that could inform a judgement of highway safety risk in this case. As a result, there would have been no wasted expense on dealing with this matter.

Recommendation

20. I recommend that the application for a partial award of costs be refused.

Mike Robins

INSPECTOR