
Costs Decision

Hearing held on 19 April and 24 May 2022

Site visits held on 5 and 19 April 2022

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Refs: APP/F4410/W/21/3273717

Unit 1, Pastures Road, Mexborough S64 0JJ

- 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 Catlow for a full award of costs against Doncaster Metropolitan Council.
 - The appeal was against the refusal of the Council to grant planning permission for Retrospective change of use of land to Sui Generis for the recycling of concrete, bricks, rubble and soils into a sellable by-product to provide recycled aggregates; construction materials storage; civils engineering operation use and proposed erection of modular building.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030¹ of the *National Planning Practice Guidance* (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Paragraph 051² of the PPG states that awards against local planning authorities may be either procedural in regard to behaviour in relation to completing the appeal process or substantive, which relates to the planning merits of the appeal.
3. The applicant argues that Members overturned the officer's recommendation to grant conditional permission without having sufficient evidence to do so, and that the Council's Statement of Case raises points that are not set out in the Council's decision. It is also argued that in giving little weight to the enforcement of conditions relating to noise, dust and traffic movements, which are the reasons for refusal, that the Council has failed to recognise that enforcement action could be taken if the planning or Environmental Permit conditions were breached.
4. This, it is argued, amounts to unreasonable behaviour on the part of the Council.

¹ Reference ID: 16-030-20140306

² Reference ID: 16-051-20140306

Traffic movements

5. The Design and Access Statement (DAS), submitted in March 2020 does not set out the proposed vehicle movements at all. The highways report dated October 2020 states that the existing trip generation is 30 two way movements and the report dated April 2021 states that existing trip generation is 60 two-way movements. The later report sets out that the development seeks to increase this to a total of 60 two way movements. However, suggested Condition 7 in the Statement of Common Ground (SoCG), suggests that the applicant wishes to increase trip generation to 120 two-way movements. Although I cannot be sure that there is not some inconsistency in the evidence with regard to the exact definition of two-way movements, it does appear that the proposed trip generation has significantly changed since the application was submitted. This also amounts to a change from what was recommended for approval in the delegated report. As such it is reasonable for the Council to consider the acceptability of 120 two way journeys at appeal.

Stockpile height

6. The DAS and Planning Statement are silent on the maximum stockpile height. The Planning Statement notes that screening of stockpiles would be achieved through vegetation. Although the delegated report notes that the 2.4 metre high blockwork walls proposed for noise mitigation would screen the stockpiles, and a height restriction of 2.4 metres was proposed as a condition in the delegated report, it is unclear to me whether the applicant agreed to this restriction in the determination period. Nonetheless, it is clear that the Council's view was that the stockpiles would be limited in height. As the Appeal Statement notes that a maximum height of 2.5 metres would not be viable, it does not seem unreasonable to me that the Council should include consideration of the stockpile height at appeal. I disagree that the Council has raised a new point in this regard.

Noise

7. With regard to noise, I acknowledge that the noise survey's conclusions were accepted in the delegated report. Nonetheless, Members took a different view and concluded that the survey conclusions did not sufficiently reflect the likely noise environment. I appreciate that the Council has not provided expert evidence to justify members' views. However, the survey is very limited in scope and given the quantum of objections from nearby residents as well as the nearby hotel, it does not appear to me to be unreasonable to give those concerns more weight than the results of a limited survey.

Dust

8. At the time of determination there were no objections from statutory consultees with regard to dust. The EA did not find the site operations to be in breach of the permit at their visits in September and November 2020. On the first occasion the dust suppression was observed to be working effectively. On the second occasion there had been recent rainfall. Moreover, there were no logged complaints to the EA with regard to dust between June 2020 and determination in December 2020. As such, although I appreciate that there was a body of complaint from interested parties, it is difficult for me to conclude why Members would find harm in this regard, particularly as the

officer's report concludes that dust management is adequate. In this regard I conclude that this amounted to unreasonable behaviour.

9. However, between determination and the appeal there is a constant stream of logged complaints to the EA with regard to dust. As such, it is difficult to reconcile the seemingly extensive steps being taken by the applicant to control dust, with the repeated complaints in this regard. I have concluded in my reasoning that dust suppression is reducing dust, but for reasons that are unclear, there still appear to be significant issues with dust deposition near the site on at least some occasions and it seems likely that the site is the source. Consequently, I do not find that the Council's behaviour has led to wasted expense at appeal with regard to dust as mitigation appears not to be wholly effective.

Enforcement control

10. Paragraph 188 of the National Planning Policy Framework (the Framework) states that *the focus of planning decisions should be on whether proposed development is an acceptable use land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.*
11. I acknowledge that the permit for recycling issued by the Environment Agency (EA) allows for the EA to take action if operators are considered to be in breach of the permit with regard to emissions. However, this does not remove the need for the decision maker to determine applications in accordance with the local development plan. In this case, the policy tests include references to residential amenity in relation to the proposed use of the land, as does Paragraph 127 (f) of the Framework, also cited in the Council's decision notice.
12. Moreover, planning conditions are required to be precise and enforceable. There is nothing before me that suggests thresholds against which dust deposition or noise arising from the recycling operations and additional vehicle movements, have been suggested or could be effectively measured.

Employment Land

13. The officer's report concludes that the development is *capable of forming a sustainable proposal when assessed against emerging LP policies*. At appeal the Council notes that there is no evidence to demonstrate that the land is no longer for its lawful uses, as required by LP Policy 4 (F). However, although this is a change from the Council's original position, I am satisfied that it was not a material consideration at appeal.

Conclusion

14. As a considerable period of time had elapsed between the lodging of the appeal and the scheduling of the hearing, I allowed both parties to update their evidence. The appellant submitted revised plans in early April and an updated statement of case in late March. As such, the applicant had the opportunity to address any new points raised by the Council before the hearing.

15. As set out above, I conclude that unreasonable behaviour leading to unnecessary costs at appeal has not been demonstrated. The application for an award of costs is refused.

A Edgington

INSPECTOR