



Costs Decision

Site visit made on 26 July 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Costs application in relation to Appeal Ref: APP/Z4718/W/22/3294996 Land To North West Hog Close Lane, Victoria, Barnsley HD9 7TE

- 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 Peter Turner for a full award of costs against Kirklees Council.
 - The appeal was against the refusal of planning permission for landfill incorporating access and turning facilities, temporary fence and restoration to agricultural use.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. Unreasonable behaviour may be procedural and/or substantive.
3. The applicant claims that the Council has acted unreasonably in that it took too long to process and determine the application when it clearly met national and local policy; requested information and reports that were disproportionate to the size and complexity of the proposal; failed to correctly interpret and apply national and local waste policies; referred the application to two unnecessary planning committee meetings, resulting in additional professional fees; and not approving the application immediately after an appeal was allowed for an almost identical scheme nearby¹.
4. I appreciate the applicant's frustrations about the length of time it took to determine the planning application. However, I note that extensions of time were agreed with the Council to enable additional information to be provided. Although I acknowledge that it still took a period of time to then determine the proposal, the internal procedures of how the Council negotiates with applicants during the processing of an application is a matter for the Council rather than for determination as part of a costs application. In addition, the PPG states that an award of costs cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission. Therefore, the length of time it took to determine the planning application is not a ground for unreasonable behaviour.

¹ Appeal reference APP/Z4718/W/19/3232011

5. It appears that additional information was requested to enable consultees to be satisfied that the proposal would be acceptable from the perspective of their particular disciplines. From the information set out within the various consultee responses and the officer report, the requests for additional information do not appear to be unreasonable given the nature of the proposal and the site specific circumstances, such as the steep slopes of the gully and the implications this would have for ground stability, the relationship of the development with groundwater and springs in the area, and drainage and flood management measures.
6. In my view, the Council did not improperly interpret and apply national and local waste policies. The officer report recognises that the material to be imported to the site cannot be managed further up the waste hierarchy, which I do not interpret as confusing the use and type of waste. The officer report identifies the various national and local planning policies that would be relevant and sets out an assessment of the proposal against these. It also provides an explanation of why sites were considered to have landfill capacity and why others were not, including a reference to the environmental permit process, recognising that it would need to be addressed prior to the importation of waste. The reason for refusal explains why the proposed development was considered to be unacceptable and is framed within the context of the development plan. Accordingly, the appeal could not have been avoided.
7. The planning application which is the subject of the appeal was considered by the Council's planning committee on three separate occasions, each time with a recommendation of refusal on similar grounds relating to a lack of proven need for additional landfill capacity for this type of waste. Members resolved to defer the application at the March and July 2021 committee meetings to allow the applicant to submit additional information on a waste needs assessment, landfill capacity and the benefits to agricultural production associated with the proposal, and to provide details of an enhanced landscaping scheme.
8. There will be occasions where the planning committee considers that it needs additional information to ensure that it is making a sound decision on a proposal. Given the policy context applicable to the appeal scheme and the site context, it is understandable that the planning committee wanted to satisfy itself that the information presented in terms of need and capacity, agricultural benefits, and compensatory measures was comprehensive and would allow for an informed decision to be made. In themselves therefore, the planning committee deferrals are not evidence of unreasonable behaviour.
9. The main issues considered in the appeal referenced by the applicant² were whether the proposal would be inappropriate development in the Green Belt and the effect on the character and appearance of the area. The acceptability of these matters is often dependent on site specific circumstances and are therefore not always directly comparable to other development. In any event, the Council considered this current appeal scheme to be acceptable in terms of Green Belt and also character and appearance subject to mitigation but did have other concerns which were not considered in the earlier appeal decision. I do not therefore find that the Council acted unreasonably by not granting permission for this proposal immediately following the earlier appeal decision.

² Appeal reference App/Z4718/W/19/3232011

10. I note the list of wasted expenses provided by the applicant. Given that the appeal could not have been avoided, the statement of case and supporting documents would have been necessary. It seems to me that it would have been necessary for the applicant to address the other matters listed as part of the application in any event.
11. For the above reasons, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

F Wilkinson

INSPECTOR