The Planning Inspectorate

Costs Decision

Site visit made on 1 November 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Costs application in relation to Appeal Ref: APP/G2713/W/22/3301152
New Mill Farm, Thormanby, York YO61 4NN

- 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 New Mill Biogas Ltd for a full award of costs against Hambleton District 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 construction of an anaerobic digestion and combined heat and power facility without complying with conditions attached to planning permission Ref 14/01736/FUL, dated 12 November 2014.

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 PPG advises that, if it is clear that the local planning authority will fail to determine an application within the time limits it should give the applicant a proper explanation. It advises that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit and why permission would not have been granted had the application been determined within the relevant period.

4. The PPG goes on to advise that if an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.

5. In summary, the applicant's claim for costs stems from the Council not communicating effectively, not undertaking a more timely and vigorous approach to problem solving in terms of alternative wording for the conditions in dispute, failing to issue a decision within the statutory period, and ultimately having to lodge an appeal against non-determination. The Council disputes that it has acted unreasonably.

6. Not reaching a decision on a planning application is not, in and of itself, grounds for a successful claim for costs, frustrating though delays caused by such inaction can be. There is provision for recourse, that being the process under which the appeal was submitted.

7. The Council expressed its concern about the application in an email to the applicant's agent dated 7 January 2022 and suggested alternatives to the removal of the disputed conditions. I note that two extensions of time for determining the application were agreed, firstly to 16 February 2022 and then 25 February 2022. Although a decision was not forthcoming following the expiry of the agreed extensions of time, the evidence before me indicates that correspondence between the parties continued prior to the appeal being submitted, albeit with a gap in communication from the Council during March and April 2022 which understandably caused frustration for the applicant.

8. This communication includes emails that set out the Council's concerns about the removal of the conditions in dispute. It includes suggested alternative wording for the conditions and requests for additional information to assist with drafting a variation to the conditions, which I note was not always forthcoming. Accordingly, while I accept that the Council did not determine the application within the prescribed period, the evidence shows that it was seeking to work with the applicant in a constructive manner and in an attempt to see if a variation to the conditions would overcome its concerns. The Council sought to articulate these concerns in its appeal statement.

9. I understand the sense of frustration which the delay has caused. However, even if the application had been determined within the relevant period, on the basis of the available evidence, I am not persuaded that an appeal would have been avoided. On balance therefore, I do not find that the Council's actions have amounted to being unreasonable such that they have caused the applicant to incur unnecessary or wasted expense.

10. The applicant has also referred to what they contend is an incorrect informative on the decision notice for a liquid feedstock/additive tank granted permission in 2020[1]. The informative states that it is necessary to submit an application to vary conditions 3 and 4 of permission 14/01736/FUL to enable use of the liquid feedstock in the facility and its onsite storage.

11. The variation to condition 3 was necessary as it restricts the feedstock to farm manure and arable crops[2] from the two named farms. The material that would be stored in the liquid feedstock/additive tank approved in 2020 would not fall within these definitions in terms of the feedstock type and its source. Therefore, the informative about the need for a variation of conditions on the original permission was correct in this respect.

12. The Council has clarified in its statement that the reference to 'waste' in condition 4 of permission 14/01736/FUL likely means animal waste, which makes sense when the condition is read as a whole. The condition is aimed at both the feedstock and the output from the anaerobic digestion facility. I acknowledge that permission reference 20/02203/FUL allows for the installation of the liquid feedstock/additive tank within the red line planning application boundary covered by permission 14/01736/FUL. There is nevertheless the

[1] Permission reference 20/02203/FUL
[2] Amended from maize silage to arable crops by permission reference 15/00493/MRC

potential for some practical difficulties of enforcing the provisions of the permissions given the restrictions imposed by condition 4 as currently worded, which would be clarified through a variation of that condition.

Conclusion

13. For the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. For this reason, an award of costs is not justified.

F Wilkinson

INSPECTOR