



Costs Decision

Site visit made on 17 May 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Costs application in relation to Appeal Ref: APP/P0430/W/22/3300155 Lockharts Farm Waste Recycling Facility, Wing Road, Cublington LU7 0LB.

- 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 Ms Poppy Ginnelly, Bulk Transfer Limited for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of planning permission for waste and recycling transfer station and port-a-cabin office without complying with conditions attached to planning permission Ref 08/20007/AWD, dated 11 February 2009.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only 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.
3. The applicant's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for reasons, as considered below.
4. The applicant's application was reported to the meeting of the North Buckinghamshire Area Planning Committee ('Planning Committee') on the 15 December 2021, with an Officer recommendation for approval. At that meeting the application was deferred, to a subsequent meeting of the Planning Committee, to allow its Members to undertake a site visit and for officers to ascertain further information on a range of matters relating to the proposal and application site.
5. As to what does or does not constitute a consideration in decision making and whether or not certain matters should be left to planning conditions are largely matters for the decision maker, which in this case was the Planning Committee. Irrespective, given the level of representations made in respect of the proposal, it is understandable that Members would want to undertake a site visit.
6. On the information before me, a site visit was undertaken and the report on the application for the Planning Committee meeting of 9 March 2022 included revised sections which considered the further detail. I also note that a revised

- landscaping scheme was submitted which related to one of the matters for the deferral of the application.
7. At the subsequent meeting of Planning Committee of 9 March 2022, Officers provided updates on the matters on which further information had been sought, and the original recommendation as set out in the 5 December 2021 report remained unchanged.
 8. Based on the available evidence, following discussion which also included an adjournment, Planning Committee resolved to defer determination of the application subject of the appeal and a separate planning application to provide noise mitigation at the appeal site (CM/0018/21), to allow officers time to assess the wording for the suggested reasons for refusal as discussed at the meeting.
 9. Notwithstanding the officer recommendation, I do not consider that the decision of Planning Committee to defer decision making to request further information, undertake a site visit or to consider reasons for refusal of an application constitute unreasonable behaviour.
 10. When the applications were taken back to the meeting of Planning Committee on 6 April 2022, planning application CM/0018/21 was approved. However, the application subject of this appeal was refused.
 11. Planning Committee went against the advice of the Council's professional officers. Planning Committees are not bound by a professional recommendation and are entitled to depart from this based on the facts of the case and planning judgment. However, this is not an unqualified right, as members of a planning committee must be able to properly substantiate any concerns identified.
 12. In summary, the Council's reason for refusal alleges that the proposal would harm the living conditions of neighbours and the amenity of the area. In particular, this refers to the intensification in use and operation of the site, including the introduction of further machinery and the increase in Heavy Goods Vehicle ('HGV') movements. Referencing specific nearby dwellings and the local highway network. The refusal reason also refers to relevant development plan policies.
 13. Consequently, the reason for refusal set out in the Council's decision notice is complete and specific to the application. Nonetheless, the Council's conclusions about the impact of the proposal are not clear and supported by sufficient analysis.
 14. Based on my observations, the changes in the approved layout to accommodate additional machinery at the site, the extension of the operating hours of the business and increase in the limit on HGVs accessing the site, would result in an increase in throughput of waste and an intensification in the use and operation of the site.
 15. As already stated, Planning Committee also considered and approved planning application CM/0018/21. This specifically proposes noise mitigation necessary to minimise noise impacts arising from the additional machinery. However, as part of the Council's Appeal Statement, no evidence has been provided to justify why the proposed mitigation would not work, nor was there any consideration of the proposed planning conditions that are intended to prevent harm to local amenity.

16. Furthermore, the Council's analysis in respect of noise in its Appeal Statement, largely summarises the results of the Noise Impact Assessment ('NIA')¹ undertaken by Environmental Noise Solutions Limited. Whilst the Council asserts that the HGV movements and the tipping of materials would be a particular noise intensive activity which would be disruptive with a measured impact upon amenity. This assertion is not supported by any substantive evidence, particularly in the context of the approved waste and recycling transfer station at the appeal site.
17. The Council also asserts that users of the Public Right of Way, north of the appeal site are likely to experience increased noise levels above those already permitted. However, I am not aware of any permitted noise levels associated with the approved waste and recycling transfer station at the appeal site.
18. The Council's Appeal Statement also alleges that an increase in noise and dust from the proposal would be harmful to the health and welfare of pigs kept at South Tinkers Hole Farm. I consider this to be unrelated to the Council's reason for refusal.
19. Most notably, the NIA, concludes that provided the recommendations contained within it are implemented, noise is not considered to represent a constraint to the proposal. Also, the Council's Environmental Health Officer, has raised no objection to the proposal with regard to noise impacts.
20. Consequently, the Council's assessment about the impact of noise from the proposal on the living conditions of residents is largely unsubstantiated.
21. Regarding the increase in HGV movements and the effects of this on amenity in respect of the local highway network, I concur with the Council that this is separate from matters relating to highway safety and capacity, which were addressed in the submitted Transport Statement to the satisfaction of the Highway Authority.
22. Even so, other than a generalised statement that: 'the presence of increased amounts of HGVs are particularly intimidating on these routes and is considered to negatively impact amenity' the Council's Appeal Statement provides little evidence to substantiate how the increase in HGVs would harm amenity with regard to the highway network.
23. As part of its case, the Council's Appeal Statement also refers me to its various reports to planning committee in respect of the applicant's application. However, these generally lend support to the proposal.
24. I acknowledge that the consideration of effects on amenity can be subjective, requiring a degree of planning judgement. Nevertheless, for the above reasons, overall, the Council's assertions about the impacts of the proposal are vague and generalised, which are unsupported by sufficient analysis.
25. As such and given that I have found in favour of the applicant's appeal, the Council's decision to refuse planning permission for this development and its opposition to this appeal has the effect of preventing development which should clearly be permitted, having regard to the development plan, national policy and other material considerations. Having regard to paragraph 049-Reference ID:16-049-20140306, this constitutes unreasonable behaviour.

¹ NIA/9791/21/9915/v5/Lockhart's Farm

26. Given the above circumstances, the only recourse for the applicant was to lodge an appeal. As a result, the applicant has had to incur additional costs of the appeal.

Conclusion

27. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the PPG, has been demonstrated. Accordingly, I conclude that a full award of costs is justified.

Costs Order

28. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Buckinghamshire Council shall pay to Ms Poppy Ginnelly, the costs of the appeal proceedings described in the heading of this decision and those associated with making the costs application, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.
29. Ms Poppy Ginnelly is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Aqbal
INSPECTOR