The Planning Inspectorate

Costs Decision

Site visit made on 12 September 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

**Costs application in relation to Appeal Ref: APP/H0520/C/22/3293584
Land at and including Unit 11 Little America Industrial Estate, Moor Road, Great Staughton, St Neots, PE19 5BJ**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Forestry Fuels Limited for a full award of costs against Huntingdonshire District Council (the LPA).
- The appeal was against an enforcement notice alleging the material Change of Use of the land from Sui Generis MOD (former WW2) use to B2 General Industrial use, being charcoal manufacture and wood heat treatment, and expansion of the use beyond the planning unit onto previously undeveloped/unused land and associated B8 open storage.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (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.

3. The applicant's case is made on both procedural and substantive grounds. That the appellant requested evidence of the LPA's enforcement case before and after the enforcement notice was issued and the appeal was lodged. That the LPA issued the notice despite considering an undetermined Lawful Development Certificate (LDC) application. That the LPA did not undertake a suitable assessment of the development prior to issuing the notice, and made assertions about the impact of the development not supported by objective analysis. Consequently, that the applicant incurred unnecessary expense through the appeal process.

4. In the correspondence appended to the application, the appellant's agent advised that the use had been operating for a period exceeding nine and a half years. The LPA therefore had only a limited window within which it could issue an enforcement notice within the 10 year period. The LPA would not normally be expected to produce its evidence before it had served an enforcement notice, and the LPA does not appear to have been obstructive in its response to the applicant in the information before me.

5. The applicant's request after the notice was issued related to evidence relating to the lawfulness, or otherwise, of the development. But the applicant did not appeal on grounds (c) (that the matters alleged did not constitute a breach of

planning control) or (d) (that at the date the notice was issued no enforcement action could be taken against it). They have therefore not incurred unnecessary or wasted expense through the appeal process on those grounds. Insofar as these matters were relevant to the applicant's appeal on ground (f), they referred to the evidence submitted for the LDC appeal, which I have dismissed.

6. I note the LPA served its enforcement notice while still considering the LDC application, and I have not seen a compelling reason for the additional time taken by the LPA in relation to the LDC application. It is also surprising that the Council's Environmental Health officers have not reviewed the appellant's technical noise, odour and air quality reports, despite the time constraints afforded by the appeal timetable.

7. Nevertheless, the LPA's case was that their environmental health team was investigating reported adverse effects, and it had not been demonstrated that the use was, or could be made, acceptable sufficiently to meet its local plan policy requirements. That was not an unreasonable approach to take, and in my appeal decision I found adverse environmental effects arising from the use. The appellant did not therefore incur unnecessary expense in relation to its provision of noise, odour and air quality assessments.

8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Peter White

INSPECTOR