



Costs Decision

Hearing held on 5 December 2023

Site visit made on 6 December 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2024

Costs application in relation to Appeal Ref: APP/T1600/W/23/3324695 Land at Bow Farm, Bow Lane, Ripple

- 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 Moreton Cullimore of M C Cullimore (Gravels) Ltd for a full award of costs against Gloucestershire County Council.
 - The appeal was against the refusal of planning permission for extraction of sand and gravel with restoration using site derived and imported inert material to wetlands, nature conservation and agriculture.
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Decision

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

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. Unreasonable behaviour may be procedural and/or substantive.
3. In summary, the applicant claims that the Council has acted unreasonably in that it has gone against the advice of its professional officers without good reason and there is no evidence to support/rationalise its reasons for refusing the application. The reasons for refusal have no regard to the development plan, the submitted environmental information or several other relevant considerations. The reason for refusal relating to climate change is a matter of principle. The potential effects of noise and dust are capable of control using appropriate planning conditions. Furthermore, the Council has not presented a case at appeal to substantiate its reasons for refusal. The Council has not presented a counter argument to the costs application.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Other examples of unreasonable behaviour include preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations, and refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.

5. I have noted the recommendation of the Council's officers which was for approval. The planning committee is not duty bound to follow the advice of its officers if its contrary decision is made on planning grounds and clear evidence is provided to substantiate that reasoning. Two reasons for refusal were given by the planning committee.
6. Reason for refusal one states that the proposal would be contrary to Gloucestershire County Council's declaration of climate emergency and paragraph 152¹ of the National Planning Policy Framework.
7. It appears from the committee minutes that the main concern is around the carbon footprint of the proposal. However, no evidence has been presented to clearly demonstrate that the proposed development as a whole would result in unacceptable effects in this regard, or what balancing exercise was carried out with the benefits of a supply of minerals well located to the main markets. In my view therefore, the Council has not substantiated this reason for refusal.
8. The second reason for refusal is concerned with the significant risk of harm to the local economy because of dust and noise generating activities within the site.
9. The planning application was accompanied by an Environmental Statement (ES). This was supplemented by the submission of additional information provided under Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (ES Addendums). Dust and air quality assessments and a noise assessment were included as part of the original ES. The applicant submitted additional information on dust/air quality and noise through several of the ES Addendums.
10. The applicant's various assessments demonstrate that the dust/air quality and noise assessments have been undertaken in accordance with appropriate methodologies. The assessments demonstrate that noise and dust could be controlled to secure compliance with recognised advice and guidance including that set out in the PPG. The Council's technical consultees that provide advice on noise and dust/air quality matters did not raise objections to the proposed development. Appropriate controls and mitigation measures could be secured through conditions.
11. The ES includes a health and wellbeing chapter. It concluded that through implementation of the mitigation and attenuation measures outlined in the ES, it considered that the proposed development would not result in any significant adverse risk to the health and wellbeing of sensitive receptors. Consultees with a remit for health and wellbeing have not raised objections, subject to the implementation of mitigation measures.
12. The Council has not identified any compelling technical evidence to contradict the applicant's assessments or to establish that noise and dust would have an unacceptable effect on the local economy. Accordingly, I conclude that the Council has not substantiated its second reason for refusal. In addition, the reason for refusal relates to matters capable of being dealt with by conditions. These factors constitute unreasonable behaviour and has resulted in the applicant having to provide evidence on this matter to support their case, thereby incurring unnecessary expense in defending the appeal.

¹ Paragraph 157 of the December 2023 National Planning Policy Framework

Conclusion

13. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the proposed development should not have reasonably been refused. The refusal of permission therefore constitutes unreasonable behaviour contrary to the guidance in the PPG and the applicant has been faced with the unnecessary expense of addressing these matters.

Costs Order

14. 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 Gloucestershire County Council shall pay to Mr Moreton Cullimore of M C Cullimore (Gravels) Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Gloucestershire County 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.

F Wilkinson

INSPECTOR