



Costs Decision

Site visit made on 4 January 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Costs application in relation to Appeal Ref: APP/D2510/W/23/3323507 Station Farm, Sleaford Road, Tattershall, Lincolnshire LN4 4JG

- 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 Neil Harvey for a full award of costs against East Lindsey 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 outline erection of up to 125 no. dwellings.
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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. The PPG¹ sets out examples of unreasonable behaviour by local planning authorities which includes preventing or delaying development which should clearly be permitted.
3. The applicant has sought an award of costs on this basis, as the Council did not determine the appeal within agreed extensions of time, that it was clear that issues related to capacity to deal with foul drainage were subject to separate controls and that a condition could provide sufficient certainty for planning purposes. The Council rebuts this, with reference to the detailed objections from the Environment Agency (EA) and the obligation under Regulation 33 of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD) to have regard to river basin management plans (RBMP) when exercising their functions.
4. I do not doubt that it was an unfortunate error that meant the original response from the EA was not seen by the case officer. I also note the Council continued its active engagement on this issue after the submission of the appeal. While this took some time, this is not unusual in complex issues that involve a number of parties. I do not consider these to be unreasonable behaviour.
5. The drainage report submitted with the application included a copy of pre-application advice from Anglian Water (AW) which clearly set out that there was not capacity at the Coningsby Water Recycling Centre (CWRC) to deal with

¹ Appeals Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

foul water from the proposed development, that AW would be obliged to deal with this were permission to be granted and that they would do this. Further comment from the EA would appear to cast doubt on these assurances, as it highlighted non-compliance with the Environmental Permit over a number of years at the CWRC.

6. I am mindful of the advice in the National Planning Policy Framework at paragraph 194 that the focus of planning decisions should be on whether the proposed development is an acceptable use of land and that it should be assumed that separate pollution control regimes will operate effectively. However, this has to be balanced against the policies of the development plan which require development to show how adequate foul water treatment will be provided and the advice at paragraph 180 of the Framework that development should, wherever possible, help to improve local environmental conditions such as water quality and the obligations placed on all public bodies in the WFD. I note that the waterbody has a moderate ecological status and that sewage has been a factor in it not achieving a good status.
7. The PPG identifies² that water quality can be a significant planning consideration where a proposal would indirectly affect a water body through a lack of adequate infrastructure to deal with wastewater. It also confirms³ that there is a general duty on all public bodies to provide information and such assistance as the EA may reasonably seek in connection with exercising their responsibilities for implementing the WFD.
8. Ultimately, this was an issue which could be addressed appropriately by condition. However, it was necessary for the Council to be satisfied that it had had full regard to all material considerations in making its decision, was imposing a condition which met the tests set out in paragraph 56 of the Framework and was discharging its duty under the WFD.
9. Taking all of these considerations into account, the Council's actions in considering the issue of foul water were an appropriate, proportionate response. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J Downs

INSPECTOR

² Water supply, wastewater and water quality Paragraph: 016 Reference ID: 34-016-20140306 Revision date: 22 07 2019

³ Water supply, wastewater and water quality Paragraph: 018 Reference ID: 34-018-20161116 Revision date: 22 07 2019