The Planning Inspectorate

Costs Decision

Hearing Held on 9 January 2024

Site visit made on 10 January 2024

by Chris Preston BA(Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Costs application in relation to Appeal Ref: APP/P3040/W/23/3315368
Land north of Cotgrave Road, Owthorpe, Nottingham, Notts NG12 3GE

- 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 & Mrs Tim and Lyndsey Bowden for a partial award of costs against Mr Richard Barlow (Tom Barlow & Partners).
- The hearing was in connection with an appeal against the refusal of an application for planning permission for the erection of 4 poultry buildings, 8 feed bins, 2 feed blending rooms, gate house, generator, plant room, water tank, dirty water tank and gas tanks. Creation of new access road, car parking and concrete apron as well as new attenuation pond.

Decision

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

The submissions for Mr & Mrs Tim & Lindsey Bowden

2. The application was made in writing and the following is a summary of the main points.

3. The application seeks a partial award of costs in respect of the late submission of a cumulative assessment forming part of the Environmental Statement and an updated Odour Impact Assessment and associated documentation. The late submission of that evidence, which should have been submitted with the initial appeal, has led the applicant (the Interested Party) to incur unnecessary costs in considering the late evidence, including the advice of their solicitor and environmental consultant before responding to that information.

4. Paragraph 052 of the Planning Practice Guidance (PPG) refers to examples of behaviour that may give rise to an award of costs including a delay in providing information or failure to adhere to deadlines and introducing fresh information at a late stage necessitating extra expense for preparatory work that would otherwise not have arisen.

The response by Mr Richard Barlow (Tom Barlow & Partners)

5. The appellants lodged the on 25 January 2023 and the Inspectorate acknowledged it as being valid on 16 March 2023. The 'start letter' was issued on 28 June 2023. This letter set out the various deadlines, including final comments no later than 16th August 2023. The Inspectorate forwarded the Council's statement and third-party representations on 24 August 2023 and duly extended the deadline for final comments to 07 September 2023.

6. On 07 September, approaching 8 months after the appeal was lodged, the Inspectorate's Environmental Services section issued a Regulation 25 request requiring the appellant to supply further information. It is not reasonable for the appellants to be held liable for the Interested Party's costs for reviewing the further information submitted after the final comment's deadline, due to the fact that it was required by the Planning Inspectorate to be submitted after the final comments deadline.

7. The revised Odour Impact Assessment was submitted in response to comments made by Dr Bull in his submissions on the Environmental Statement. It was submitted purely to provide clarification with regard to the use of gable fans. The original modelling was based on roof fans and did not include the emergency hot weather gable fans on the buildings. The revised Odour Impact Assessment simply shows that the gable fans make no material difference to the outcome of the modelling. Prior to submitting the revised modelling, the appellant's sought permission from the Planning Inspectorate, and the Inpector's response to that request is quoted below "he is mindful that the information has been provided in response to issues raised in relation to the ES and the consultation relating to it. In that context he is prepared to accept the updated modelling report and associated documents"

8. Furthermore, the fact that the Inspectorate issued the Regulation 25 request after the final comments stage had closed placed the Appellant at a disadvantage, as the publicity of the Regulation 25 information allowed an opportunity for interested parties to provide further evidence into the appeal process, but with no opportunity for the Appellants to respond, other than verbally, at the hearing itself.

9. There was no delay in providing information or failure to adhere to deadlines, and the appellants responded extremely promptly in providing the additional information that was required by the Planning Inspectorate following the Regulation 25 request. The deadlines associated with the submission of the Regulation 25 information were different to the appeal deadlines as set out in the Regulation 25 request letters.

10. As set out above, the Appellants believe that the costs claim should fail.

Reasons

11. As set out in the PPG costs may be awarded where a party has behaved unreasonably and that behaviour has led to wasted expense in appeal proceedings.

12. The fact that the appellant submitted revised information relating to the ES after the final comments stage is not, itself, evidence of unreasonable behaviour. The context is clearly important. The application had been recommended for approval but members of the planning committee resolved to refuse planning permission. An ES and associated documentation had been submitted to the Council and officers were seemingly happy with its content. Whilst the Interested Party is of the view that further information was necessary in respect of the Environmental Impact Assessment Regulations 2017 the Council did not take that view and did not make any request for further information.

13. Up until that point, the appellant had an expectation that things were proceeding well and that the scheme was recommended for refusal. The appeal was subsequently submitted, largely based on information provided with the application as is commonly the case.

14. The agent has pointed out the timeline and the significant delay at the start of appeal proceedings was down to the Inspectorate not the appellant. The Reg25 request was not submitted by the Inspectorate's Environmental Services team until September 2023 and the appellant responded promptly and provided the further information requested. It is the case that the Interested Party had questioned the content of the ES at an earlier stage but an appellant does not have to respond to every comment provided and it was reasonable to continue on the basis of the original ES until the formal Reg25 request was made.

15. At that point in time the appellant really had no option but to respond. It would have been unreasonable not to in the face of the request for more information. That then led to some back and forth in terms of consultation on the revised documents and clarification. None of that was at the instigation of the appellant, it was a consequence of the process and the length of time the Inspectorate took to issue the Reg25 request.

16. Therefore, the appellant did not behave unreasonably in respect of the timing of his submissions and there are no grounds for an award in that regard. Moreover, the question of whether more information was necessary in respect of technical issues relating to the ES was a matter of judgment. It is not a case that the original ES was obviously flawed that it was unreasonable for the appellant to have submitted it in the absence of certain information.

17. It is not uncommon for differences of opinion to arise on the content or 'scope' of an ES and the fact that information was not submitted at an earlier stage is not evidence of unreasonable behaviour.

18. Moreover, even if I were to take a different view on the above, the position of the Interested Party is that the information was necessary as part of the appeal proceedings. As noted above, paragraph 052 refers to the submission of late information leading to additional preparatory work "that would otherwise not have arisen". Setting aside the timing it seems highly likely to me that the expense incurred by the Interested Party would have occurred in any event. The expense was incurred at their discretion and not as a result of any unreasonable behaviour from the appellant.

19. For all of those reasons there has been no unreasonable behaviour on the part of the appellant such that there are no grounds for an award of costs. Accordingly I shall dismiss the application.

Chris Preston

INSPECTOR