



Costs Decision

Inquiry held on 4 June 2024, 19-22 November 2024 and 25 November 2024

Site Visit made on 18 November 2024

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Costs application in relation to:

Appeal A Ref: APP/X4725/C/24/3337726

Appeal B Ref: APP/X4725/W/23/3336117

Land at Welbeck Landfill Site, Boundary Lane, Normanton WF6 2JA

- The application is made under the Town and Country Planning Act 1990, sections, 78, 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Welbeck Waste Management Ltd for a full award of costs against Wakefield Metropolitan District Council (the LPA).
 - The Inquiry was in connection with:
 - Appeal A against an enforcement notice alleging the breach of condition 1 of planning permission Ref: 18/00754/WAS in that the importation of non-hazardous waste is continuing to be imported into the landfill containment site area after the specified time period.
 - Appeal B against the refusal of planning permission for the reclamation by landfilling with colliery spoil and controlled waste without complying with conditions attached to planning permission Ref 18/00754/WAS, dated 14 September 2018.
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Decisions

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

The submissions for Welbeck Waste Management Ltd

2. The costs application was made orally at the inquiry. The applicant contends that the LPA has behaved unreasonably on the following grounds.
3. Firstly, that the LPA should have known that there was no reasonable alternative to securing the safe, long-term stability of the landfill other than granting planning permission for the application. The 2023 addendum to the 2018 environmental statement (ES) set out why the alternatives could not be pursued, and the LPA did not request further information on such matters from the applicant during the application. In the absence of its own technical assessment, the LPA had no reasonable basis to reject that of the applicant. Moreover, it is evident that, whilst the LPA held discussions with the Environment Agency (the EA) during the course of the application, it had asked the wrong questions of the EA and thus got the wrong answers. Ultimately, there was no proper evidential basis for the LPA to assume that an alternative to the application or appeal scheme could be delivered and in essence, the LPA's position is essentially inviting a direct breach of the landfill directive. Consequently, the appeals could and should have been avoided.
4. Secondly, at the time the application was refused, there was no evidence before the LPA which justified the reasons for refusal on the grounds of ecology. The LPA accepted that there was no basis on which updated ecological assessment needed to be undertaken for the application. Ecology was scoped out of the 2023

addendum to the 2018 ES. Furthermore, the LPA officer report to committee advised that the extension of time to complete the restoration and revised restoration scheme would not affect the ecology of the site. Even in May 2024, the LPA's position was that no further assessment of the impacts of the proposals on ecology would be required through an updated ES. To that end, the evidence of the LPA's ecology witness was flawed because: its criticism of the 2024 ES was contradictory to the LPA's previously expressed position; it was not grounded in any objective assessment work; it incorrectly elided the 2018 and 2024 ES, ignoring that a new baseline had been established; it alleged the need for additional protected species surveys without any proper regard to the facts of the case; there was a failure to engage with the applicant's witness on a topic specific statement of common ground; alleged impacts in respect of pollution and dust on designated sites did not acknowledge or accept the efficacy of the environmental permitting controls of the site; alleged cumulative impacts from theoretical and unspecified development sites; and it did not consider the ecological impacts of the alternatives. As a result, the LPA failed to produce evidence to substantiate its reasons for refusal.

5. On that basis, the LPA has behaved unreasonably and wasted expense has been incurred through the appeal process.
6. In the alternative, the applicant seeks a partial award of costs for those incurred following the submission of the 2024 ES since the LPA was put on notice that: the ecology impacts that would arise would not justify the refusal of permission; there were no reasonable alternatives to the appeal scheme; and, the ecological impacts which would flow from the theoretical alternatives were both adverse and significant.
7. In respect of Appeal A, it was not expedient for the LPA to issue the notice. The applicant's ground (a) appeal was bound to succeed in light of the above. In respect of ground (f), the LPA should have cognisant of the fact it was not necessary for the notice to require the cessation of waste imports to remedy the alleged breach. Finally, in respect of ground (g), in light of the technical evidence it was unreasonable of the LPA to require cessation of imports within two months of the notice taking effect. On that basis, the LPA behaved unreasonably in issuing the enforcement notice and wasted expense has been incurred through the appeals.

The response for Wakefield Metropolitan District Council

8. The response was made orally at the Inquiry. In summary, the LPA sought to engage with the EA and one would expect the regulator would be someone who the LPA would look to for advice without just accepting the applicant's position. Indeed, the applicant's witness on technical landfill matters accepted it was right for the LPA to engage with the EA. Whilst the applicant may have been critical of the EA's position in respect of its discussion with the applicant during the application, the LPA was entitled to rely on what the EA had said. Moreover, the LPA does not accept that it had asked the wrong question of the EA and, even if it had, it was entitled to rely on the fact that the EA had raised no 'red flags'.
9. The LPA did review its case in May 2024 and liaised with its planning and ecology witnesses and decided to continue with the appeals. The evidence may not have stood the test of time but it was reviewed and considered acceptable to continue

with the appeal. Thus, the LPA has produced expert evidence which, whilst it may not have stood the test of time, it has produced evidence and thus has substantiated its reason for refusal.

10. Even if unreasonable behaviour were to be found, wasted expense would not have been incurred on the opening day of the Inquiry in June 2024, as the adjournment fell on the applicant. Thus, if the applicant succeeds, it cannot be said that wasted expense was incurred in terms of appearance at that day of the Inquiry. Moreover, Mr Martin's rebuttal evidence arose from consultation with the EA, not points raised by the LPA, therefore it cannot be said to have been wasted expense incurred as a result of the LPA's unreasonable behaviour.

Reasons

11. 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.
12. The 2023 addendum to the 2018 ES was submitted with the application subject of Appeal B. Section 5.4 of the addendum carries out an assessment of the environmental effects of alternatives to the proposed extension of time of tipping operations. Those alternatives included the "no new development", "soils only" and "alternative landform" scenarios that were before me in the appeals. The addendum concludes that the continued operation of the landfill would provide benefits to waste management and biodiversity in contrast to the alternatives.
13. In the officer report to the planning committee of 16 November 2023, the LPA officer set out the alternative options for closure of the landfill and the assessment the applicant had made. Moreover, the officer report sets out that the LPA had sought the further views of both the applicant and the EA on a without prejudice basis regarding the position in the event of the landfill containment site closing on 31 December 2023 in accordance with the 2018 permission. It then reported the response of the applicant, who made clear that, "to ensure that risks to the receiving environment are minimised and that a technically acceptable sympathetic landform is achieved, it is clear that disposal operations need to continue".
14. Furthermore, the officer report sets out the EA's response to its discussions in which the EA stated that to comply with the Environmental Permit, it would require any areas of the site not completed with engineered capping and landfill gas extraction to have these elements completed within 6 to 12 months of waste tipping ceasing. It also reported that the EA stated, amongst other things, that the EPR permit will remain valid until such point that a Closure Report was submitted and the permit varied to close the site, noting that the applicant would be required to operate the site in accordance with the permit until its surrender.
15. Whilst the EA's comments did not explicitly agree with the applicant's case that the alternatives were more harmful, the EA did not disagree with the applicant's assessment.
16. Moreover, the EA's response was in respect of the question from the LPA officer as to "what are the practical requirements for the EA for the closure of the landfill cells and any subsequent monitoring under the permit" in the event the landfill site was to close on 31 December 2023. The officer did not ask for the EA's assessment of

the environmental impacts of the alternatives that would arise in the event the application was refused. Quite rightly, the LPA was entitled to rely on what the EA had said and indeed it was entitled to rely on the fact that the EA had raised no 'red flags' as was put to me at the Inquiry. However, it ought to have had regard to the fact that the EA did not dispute the applicant's conclusions. The fact of the matter is that neither the EA nor the LPA officer contradicted the applicant's evidence in the committee report. To that end, the committee had no basis on the evidence before it to come to a contrary view.

17. Indeed, the planning committee ought to have been plainly aware of the potential environmental effects that would arise if the application was refused and the landfilling of waste ceased by 31 December 2023. That was set out in the ES addendum and not disputed by the LPA officers or the EA.
18. Furthermore, the officer report clearly sets out that, "the current use of the application site means that ecological receptors are limited in number and value." It goes on to state that, "it is considered that the short extension of time to complete the restoration works and revised restoration profile will not affect the ecology of the site beyond that previously considered as part of the extant planning permission."
19. Moreover, the officer report goes on to conclude that, having regard to noise, dust, odour, vermin, flies, public health, community safety and socio-economic considerations, that "the proposed extension of time for operating the landfill would not unacceptably harm the living conditions of local residents and would not cause significant harm to any other nearby facilities such as schools or retail/commercial premises in proximity to the area."
20. The committee thus consequently determined to refuse the application on the basis the extension of time would result in harm to the living conditions of nearby residents and harm to ecology.
21. However, the substantive evidence before it was that the harm that would arise to living conditions and ecology from the alternatives would be greater than that which would arise from the application scheme, if indeed there was any at all. To that end, it was unreasonable of the LPA to refuse the application on that basis.
22. In terms of the behaviour in respect of the appeal process, the LPA did not offer evidence regarding the environmental effects of the alternative scenarios nor compare them to the effects the LPA's evidence alleged would arise from the appeal proposals. The LPA did not dispute the applicant's findings nor did it offer any consideration of other alternative options.
23. In essence, the LPA's ecology and (subsequently withdrawn) planning evidence was in essence unconscious of the environmental implications the outcome of its position would have. I agree with the applicant that in such circumstances, it was inevitable that the LPA's ecology witness would have made the concession they did at the Inquiry that the alternative options would be more harmful in ecology terms than the appeal proposals.
24. That position should have been wholly clear to the LPA upon receipt of the EA's letter of 8 May 2024 in which it concluded that it agreed with the arguments raised in the applicant's evidence regarding the potential management issues and associated environmental concerns which may arise should the alternative scenarios transpire. The EA stated that the refusal to grant the additional time

required to restore the site would make it difficult for it to effectively regulate the site.

25. However, I consider the LPA had sufficient opportunity before that point to review its case. Ultimately, the applicant's position had not changed with regard to the alternatives, the LPA had not sought its own evidence to contradict the applicant's position in respect of technical landfill matters and the EA had not disputed the applicant's position. The LPA should not have necessarily needed the EA's May 2024 confirmation of the applicant's conclusions on the alternatives for it to review its position at that point. Ultimately, the position was sufficiently clear at the point the application was determined, that it is difficult to see how the LPA could have expected its case to be robust when the evidential position had not changed.
26. In terms of the LPA's position in respect of the ecology impacts of the appeal proposals, the evidence put to it before the appeals regarding the lack of updated surveys was contrary to its aforementioned position regarding the ecological baseline of the site in the officer report to committee. Moreover, the evidence did not appear to sufficiently grasp with the change in the site's ecological baseline from the 2018 ES to the 2024 ES. Furthermore, the LPA did not engage with the applicant in respect of their attempt to narrow the issues between the parties ahead of the scheduled resumption of the Inquiry following the initial adjournment. Clearly, given the concessions made by the LPA's ecology witness at the Inquiry, there were areas where common ground could have been achieved. Since I had directed the parties to work collaboratively with each other, it was unreasonable of the LPA not to do so.
27. As a result, the LPA has prevented or delayed development which, on the evidence before it, should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations. Moreover, it has failed to substantiate its reason for refusal on appeal.
28. In addition, whilst I have upheld the enforcement notice in respect of Appeal A, that is because of the limitations of my considerations under ground (a) in respect of a notice directed against the breach of condition 1 of the 2018 permission. Plainly, in refusing planning permission on an application which should clearly have been permitted on the evidence before it, and in failing to substantiate its reasons for doing so, the LPA has undertaken enforcement action which could have been avoided. It was unreasonable of it to do so.
29. As a consequence of the LPA's unreasonable behaviour, the applicant has incurred wasted and unnecessary expense in undertaking the appeal process.
30. The LPA argues that wasted expense would not have been incurred on the opening day of the Inquiry in June 2024, as the adjournment fell on the applicant. However, the applicant had foreshadowed the proposed amendments and the submission of the 2024 ES ahead of the exchange of proofs of evidence stage. The LPA resisted acceptance of the 2024 ES and consideration of the revised proposals and thus I determined to proceed with the Inquiry so I could hear submissions from the parties on the matter. It was not unreasonable of the applicant to amend the proposals in reaction to the changing circumstances post the LPA's refusal of the application nor was it unreasonable to submit an updated ES. Thus, I am satisfied wasted expense was incurred by the applicant in appearing at the Inquiry on the opening day as a result of the unreasonable behaviour of the LPA I have set out above.

31. Moreover, whilst the rebuttal proof of Mr Martin of August 2024 was in direct response to the EA's letter to the Planning Inspectorate and not the LPA, the LPA's unreasonable behaviour as set out above was such that the appeal proceedings ought not to have reached the stage that such evidence needed to be produced.

Conclusion

32. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

33. 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 Wakefield Metropolitan District Council shall pay to Welbeck Waste Management 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.
34. The applicant is now invited to submit to Wakefield Metropolitan District 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.

J Whitfield

INSPECTOR