The Planning Inspectorate

Costs Decision

Hearing and site visit made on 19 March 2015

by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 May 2015

Appeal Ref: APP/Y2736/A/14/2226293
Gravel Pit Farm, Sand Hutton, York, YO41 1LN.

- The appeal is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990 (the Act), and section 250(5) of the Local Government Act 1972.
- The application is made by Ryedale District Council for a full award of costs against JFS Gravel Pit Biogas Ltd.
- The application Ref. No: 14/00709/MFUL, dated 24 June 2014.
- The development proposed is for a farm scale anaerobic digestion and combined heat and power plant facility.

Decision

1. For the reasons given below, the application of a full award of costs is refused.

General

2. The guidance on Costs Applications is now contained within the Planning Practice Guidance (PPG). This reiterates the long standing advice that the parties involved in planning appeals are normally expected to meet their own expenses. Even when an application for costs is made in a timely manner, as was the case here, and irrespective of the outcome of the appeal, costs may only be awarded against the party whom the award was sought if it has behaved unreasonably and, thereby, caused the party applying for costs to incur unnecessary, or wasted expense in the appeal process.

The submissions for Ryedale District Council

3. The application was made in writing at the appropriate time and relates to the unnecessary expense incurred by the Council stemming from the unreasonable behaviour of the Appellants in their resistance to and delay in providing the necessary information to allow the Council to evaluate the appeal proposal and reach a balanced and reasoned decision. Thereafter, the Appellants were unreasonable in pursuing the appeal despite the grant of planning permission for an identical scheme, albeit subject to conditions. Moreover, the information submitted by the Appellants as part of the application was misleading about whether it complied with the definition of 'farm-scale', and in particular the fact that the application maintained that all the feedstock would come from Gravel Pit Farm, even though this did not reflect the number of cattle said to be on the Farm.

4. The appeal was made 1-day after the expiration of the statutory 13-week period and while negotiations with the Appellants and the North Yorkshire County Council where progressing and the Council was still seeking to clarify the exact nature and quantum of the proposal. Under these circumstances, even had it accepted at that stage that it was a district matter, the Council was not in possession of the necessary information to enable it to reach a decision, other than to refuse the application.

5. As such, the Appellants have behaved unreasonably and not observed good practice, by appealing immediately after the 13-week statutory timescale. This left the Council unable to properly exercise its development management responsibilities and put the Council to additional time and unnecessary expense that ought to have been avoided.

Response by JFS Gravel Pit Biogas Ltd

6. The Council kept the Appellants in the dark about the discussions between it and North Yorkshire County Council that were on-going at the time the appeal was made. However, the Council should have known that legal precedent had established the principle of jurisdiction over this type of application. As such, this is not relevant to any legitimate claim for costs. The appeal was lodged after 13-weeks because the Appellants had no idea what was happening to the application.

7. As for the outstanding information the Council says it was waiting for before it could reach a decision, this does not amount to unreasonable behaviour. In the first place, the Council's requirement for noise and odour reports is inconsistent with another site, where it granted planning permission and required no similar reports, despite the location of the anaerobic digester (AD) being closer to sensitive receptors than occurs at Gravel Pit Farm.

8. In relation to highway matters, the Appellants have always been clear that the feedstock for the AD plant would be sourced from Gravel Pit Farm, whether from crops grown or from manure already on the Farm. Under these circumstances the Council did not need any further information and the Appellants were certainly not aware that the lack of information was causing a delay in issuing a decision.

9. Throughout the application procedure the Appellants behaved more than reasonably, going above and beyond what might have legitimately been required of them. On the other hand, the Council put a series of spurious obstacles in the way of this application, because it did not want to accept responsibility for deciding the application. In this regard, it was paying undue attention to the misguided views of a few local Objectors. The Council's claim that the appeal should have been withdrawn following the decision on the second application is outrageous. The Council only acknowledged validity of the second application after it was forced to do so by compelling legal argument.

10. With respect to the planning permission granted on the second application, the submission by the Council that failure to withdraw the appeal and pursue any challenges to the conditions attached thereto as a separate exercise is irrelevant. This of course remains a possibility, but should not preclude a sensible and proper debate about the imposition of conditions on the appeal

application. All conditions on either permission must meet the tests embodied in the PPG guidance.

11. Thus, the Council's claim for costs is refuted totally. The Inspector is asked to recognise the Council's actions for what they are - a smokescreen to cover up its own inadequacies - and dismiss its claim for costs, and instead justly award costs to the Appellants.

Reasons

12. The claim for costs by the Council and the Appellants rebuttal are interesting, but seem to stem more from poor communication on both sides, rather than unreasonable behaviour. The jurisdiction question by the Council and the detail in the supporting information for the appeal scheme by the Appellants both support this view. However, in concentrating on these matters, it seems to me the parties miss several fundamental points. The first of these is that I was unable to determine the appeal *de novo*, as the fall-back position of the extant planning permission precluded this and only allowed a permission no more onerous that that already issued.

13. The second and key point is that, irrespective of the pre-hearing exchanges between the main parties, or lack of it, there can be no doubt that the Council would have issued the same decision for the appeal application as it did for the second application. Thirdly, the Appellants made clear at the hearing that they would be most unhappy with five of the conditions the Council intended to impose and would have appealed against them. They could, of course, have appealed the conditions attached to the second and extant planning permission. Crucially, however, under either scenario there would have been an appeal and a hearing and the costs would have been the same.

14. The only other matter that merits consideration is whether the imposition of the conditions intended by the Council was unreasonable, because the disputed conditions failed to meet the required tests in the PPG. I am not convinced. In the case of four of the five conditions I have supported the Council, with a minor amendment.

15. With the fifth disputed condition, pertaining to the 'requirement' for a wheel washing facility, the Appellants seemed to be taking the view that one was essential. In actual fact, the draft condition did not actually say that, but only that it should be provided if considered necessary. Even then, my conclusion is not clear cut, relying on the balance of probability and the fall-back position that the local highway authority could take action in the event that mud is transferred from the site to the public highway, thereby causing a safety hazard. In any event, had I judged the circumstances of the access such as to require a wheel washing facility, the draft condition meets the obligation evinced by the PPG advice. As such, this is more a matter of opinion rather that unreasonable behaviour.

16. One crucial point missed by the Appellants is that any permission will run with the land and not be limited to the Appellants. Under these circumstances, the Council is fully justified in adopting a more precautionary approach. If it did not and problems arose, it would be criticised for not doing so. Consequently, it is necessary to take a balanced view in the wider public interest, albeit against the background of the tests in the PPG.

17. On the matter that seems to have caused particular angst, namely that the Council prevaricated about its responsibility to determine the application and the delays this caused, this counts for nothing. Even if I conclude that the Council was unreasonable during this period, this does not affect where we are today, with the Council wishing to grant planning permission subject to conditions and the Appellants disputing several conditions. Equally, even if the Council is correct about the lack of necessary information to reach a balanced view on the proposal at the date the appeal was lodged, this does not change matters. It might be by way of a slightly unorthodox route, but there was always going to be permission for the AD subject to conditions, followed by an appeal against some of those conditions and, thus, costs that both main parties incurred.

18. In summary, the nub is that there was always going to be an appeal and a hearing. Thus, this is essentially a conventional appeal scenario, where each party is expected to meet its own costs. Consequently, I find that in the application for an award of costs by the Council against the Appellants is not justified.

Conclusion

19. The application for a full or partial award of costs by the Council against the Appellants does not demonstrate that the latter's behaviour was unreasonable, and, irrespective of this, did not result in unnecessary or wasted expense, as described in the planning guidance.

J S Nixon

Inspector