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 JFS Gravel Pit Biogas Ltd for a full or partial award of costs against Ryedale District Council.
- 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 JFS Gravel Pit Biogas Ltd

3. The application was made in writing at the appropriate time and relates to the unnecessary expense incurred by the Appellants in being forced to pursue an appeal in circumstances where the Council should have determined the application within the prescribed period, avoiding the necessity of lodging an appeal against non-determination and the costs the Appellants incurred. In particular the appeal could have been avoided if the Council had acknowledged legal precedent and accepted it had jurisdiction over the application.

4. It is also an appeal that could have been avoided if the Council had behaved reasonably in terms of the controls it imposed on a second identical application and by extension to the conditions it now argues are necessary on this original application.

5. In failing to determine the application, the Council breached the most fundamental example of unreasonable behaviour, namely "*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*." Moreover, by ignoring European case law the Council showed unreasonable behaviour by acting contrary to, or not following, well-established case law.

6. As such, the Council has behaved unreasonably, putting the Appellants to additional time, trouble and unnecessary expense that ought to have been avoided.

Response by Ryedale District Council

7. The Council submits that at the time the appeal was lodged, it was in discussion with the North Yorkshire County Council over the jurisdiction of the case and could not move to a decision without its agreement. In any event, the Council was not in possession of the necessary information to make a full assessment of the proposal and determine the application. At the time the appeal was lodged there was outstanding information on a number of topics raised by the Local Highway Authority and the Council's Environmental Health Officer, including details about transport, feedstock and digestate quantities, management of the site and noise.

8. As for the conditions attached to the planning permission granted for the second application the Council is satisfied that they all fulfil the tests evinced by the Planning Practice Guidance (PPG). As such, the imposition of the same conditions on the appeal application is fully justified. Accordingly, no award of costs against the Council should be forthcoming.

Reasons

9. Irrespective of whether the Council was unreasonable in failing to accept responsibility for the determination of the case, I do not think the Appellants were put to unnecessary or wasted expense. The simple fact is that had the Council both accepted that jurisdiction fell to it for the decision and had been satisfied that it had the necessary information to decide the application it would have granted planning permission, subject to the very same conditions that were attached to the later application. In my view there can be no doubt that the Appellants would have been unhappy with these and lodged an appeal against the conditions that formed the basis of the examination at the hearing.

10. As for whether the conditions proposed by the Council were unreasonable or failed any of the other tests contained 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.

11. In respect of 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. However, the 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 site specific layout, 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. In other

circumstances, I may well have felt that a condition such as this was necessary and would have worded it very similarly to the Council's draft.

12. The one crucial point missed by the Appellants is that the permission will run with the land and not 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, albeit against the background of the tests in the PPG, in the wider public interest.

13. However, the arguments aired at the hearing stem from the conditions the Council advocated, even after all the information was provided. Much of the difficulty does seem to have stemmed from poor communication on the part of both main parties. The failure of the Council to appraise the Appellants about the stage the application had reached and the Appellants ambiguity in the supporting documentation about feedstock supply etc. Even if either was judged to have been unreasonable, this would not have prevented the costs incurred by the Appellants associated with the appeal and subsequent hearing.

14. In summary, bearing in mind the information available to it, I doubt that the Council was unreasonable in not delivering a decision within the prescribed period. This is irrespective of the jurisdiction arguments. As for the contention that the conditions the Council wished to impose were unreasonable, in four out of five of the conditions I disagree and in respect of the fifth disputed condition, this was very finely balanced. 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 a full or partial award of costs by the Appellants against the Council is not justified.

Conclusion

15. The application for a full or partial award of costs by the Appellants against the Council 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