The Planning Inspectorate

Costs Decision

Site visit made on 26 June 2024

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Costs application B in relation to Appeal Ref: APP/N2535/W/24/3337002
Hillcrest Park, Caistor, Lincolnshire LN7 6TG

- 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 West Lindsey District Council for a full award of costs against Oliver Lawrence.
- The appeal was against the refusal of planning permission for the erection of 1no wind turbine.

Decision

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

Reasons

2. The parties to this application have set out their respective cases in writing and I do not seek to replicate it here. The Planning Practice Guidance 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.

3. The Appellant indicates that in relation to Policy S14 and the NATS objections, it was not aware that the site was within a NATS radar area at the time of submission. That is a fair point given that there does not appear to be a national public register or similar for planning applicants to review their locations. However, early on in the planning application process the Applicant's agent was made aware that this matter was an issue in this case. Furthermore, the Applicant was then made aware that the impacts could be made acceptable or mitigated through changes being made to the radar system to 'blank out' the development from the radar system.

4. The conflict in this case has been over the disagreement as to who should pay for these alterations to mitigate the impact of the proposed wind turbine on aviation and/or communication systems. Added to this, is the Appellant's position that the policy does not specifically require a financial contribution but rather that the proposals impacts are acceptable. However, this creates a position whereby the way in which the proposal could be acceptable, in impact terms, is through making changes to the radar system to 'blank out' the proposed wind turbine. Rather like the chicken and egg conundrum, albeit somewhat easier to solve, unless the mitigation to the radar system is provided – in this case by means of a financial contribution – the impacts of the scheme are not acceptable.

5. The likely solution, therefore, is the provision of a legal agreement securing an obligation to provide a financial contribution towards the works needed to mitigate the impacts arising from the proposed development. The Appellant points to the fact that the policy does not specifically state this is required. However, there are many planning policies which do not explicitly state a legal agreement is required to secure, for example works to local highways to secure access for a site, and yet section 106 agreements are used to secure such mitigation.

6. The Appellant consistently argues in their appeal statement that they cannot secure a financial contribution as they have not been told what the contribution sought is. However, in their Rebuttal, at paragraph 7, they state '*The applicant has clearly not behaved unreasonably in this matter and has attempted to find a solution with NATs and the LPA but is unwilling to pay a financial contribution of circa £40,000 for obvious reasons'.* It is unclear as to what the sum of circa £40,000 relates to. If this is the monies which the Appellant thinks would be sought for the mitigation to the nearby radar system, then it is strange that they were aware of it for the costs rebuttal but were not aware of it for their appeal statement or final comments. If, on the other hand, it is a figure plucked from the air, then it does not indicate that to be the case and is unhelpful at best.

7. I do not agree with the Council's submission that the Appellant acted unreasonably in submitting the appeal – that is their right and the costs process does not exist to penalise people for exercising such rights. However, I do find that the Appellant acted unreasonably as they have not offered any substantive evidence to address the critical point as to why the impacts of their proposal are acceptable when no mechanism has been offered or secured to ensure that this would be the case in practice.

8. In terms of the lack of an Landscape and Visual Impact Assessment (LVIA), I note that this is not a requirement of the absent local list. Nonetheless, the Appellant was aware that the site lies within a nationally designated landscape in the form of the Lincolnshire Wolds AONB. To inform the planning decision-makers, the Appellant submitted five photomontages. Whilst I note the scale and quantum of the development is relatively small in size in relation to the size of the AONB, the impacts it could have on the landscape and scenic beauty of this important landscape could be disproportionately greater. This is due not only to the potential height within such a sensitive and important landscape, but also owing to the moving nature of the turbine which can raise its visibility to 'receptors' or people.

9. The absence of an LVIA in this case, or a detailed analysis of the impact on the AONB in landscape and scenic beauty terms, meant that it was not easy for a decision-maker to consider what impacts could arise in this case. It also meant that the duty relating to AONB imposed on relevant bodies; in this case the Council, could not be effectively discharged. I acknowledge that there is not a specific requirement for an LVIA to be submitted, but there is a policy requirement to consider the impacts on AONB when proposals are submitted. The request for an LVIA to be submitted, or at the very worst some form of detailed landscape and scenic beauty assessment, was reasonable.

10. The lack of detailed justification as to why this was not submitted, or even a more basic assessment of the impact on the AONB, was unreasonable behaviour by the Appellant.

11. In terms of noise, the Council does not appear to have had a formal response from their Environmental Health Team. Even if this were a 'no comment' response, it would at least give some reassurance to the Appellant and the local community that the matter had been considered by what are generally considered to be the in-house experts at a local authority on such subjects.

12. At the same time, the provision of a generic noise information from the manufacturer, including a 111-page report with numerous graphs is unhelpful when an assessment needs to be made on the site specific impacts of the development on nearby occupiers. The Appellant was plainly aware of the context of the site, including the A46 road, and had some awareness of how various factors could affect the ambient and active noise from the site and local area. Had a site specific noise survey or assessment been submitted this would have provided a more informed evidence base with which to consider the proposal and its potential impacts. The inability to provide such reasonably sought information results in unreasonable behaviour.

13. I have found that there was unreasonable behaviour in respect of not providing either information or a mechanism to secure mitigation against impacts directly arising as a result from the proposed development. The lack of providing these resulted in unnecessary and wasted expense on the part of the Applicant (the Council) who, were such information provided, could have led to issues narrowing at the appeal stage, or led to an appeal having been avoided altogether.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 Oliver Lawrence shall pay to West Lindsey District Council, 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.

16. The applicant is now invited to submit to Oliver Lawrence, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Parker

INSPECTOR