



Costs Decision

Site visit made on 24 November 2009

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

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
3 February 2010

Costs application in relation to Appeal Ref: **APP/P4415/A/09/2106347** **Kiveton Recycling Centre, The Old Kiveton Quarry, Dog Kennel Hill, Kiveton Park Station, S26 6NG**

- 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 Kiveton Heat & Power for a full award of costs against Rotherham Metropolitan Borough Council.
- The site visit was in connection with an appeal against the refusal of the Rotherham Metropolitan Borough Council to grant planning permission for a small scale combined heat and power (CHP) plant within a new building for the generation of renewable energy from low grade waste wood.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Reasons

1. Circular 03/2009 ('the Circular') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
 2. The Appellant's claim in this case is that the Council failed to show that it had reasonable planning grounds for setting aside the Officer's recommendation for approval of the proposed development. In refusing the project, the reasons given were not precise, specific or relevant to the application. Moreover, the Council failed to produce evidence to substantiate its reasons for refusal, by reference to the development plan and all other material considerations.
 3. Whereas the Council is not bound to accept the professional advice of its Officers, it is expected to show that it had reasonable grounds for taking a contrary decision. In this case, the Council refused planning permission for highway reasons against the advice of both its Transport Unit and the Highways Agency. Although requests were made by the Council concerning traffic generation, no requests for further information about the viability and sustainability of the CHP plant were made during the application process.
 4. A full award of costs is sought on the basis that the Council was unreasonable and Kiveton Heat & Power have suffered unnecessary costs and a delay of at least 5-months to the start of the project.
 5. In response the Council points out that it considered fully the material considerations, including the Officer's report, technical responses and objections from local residents. In this respect, significant weight was attached to the objections from the residents relating to the sub-standard nature of the access,
-

the proximity of the railway crossing, the narrow and restricted highways in the vicinity and the excessive volumes of traffic accessing the site. It was considered, therefore, that any additional traffic using the access would unacceptably exacerbate an already unsatisfactory situation, without any means to address the future adverse effect. In this regard, no policy exists in the development plan that exactly covers this scenario. As such, the Council submits that the highway reason for refusal was precise, specific and relevant to the application and this is borne out in its Statement of Case.

6. With regard to the additional information now submitted by the Appellants, the loss of energy from a reusable source is a material planning consideration, having regard to the requirements of sustainable development in times of global warming. At the time of the application no explanation had been submitted regarding the possibility or viability of the reuse of waste heat energy from the plant. Additionally, no information had been submitted to indicate how the proposed location was preferable to one closer to an end user or why it was proposed to utilise the heat from the plant for the generation of electricity rather than as a source of heat. It is submitted, therefore, that the additional information was necessary for the Council to fully assess the application.
7. Accordingly, therefore, the Council has acted reasonably in all respects relating to the proposals the subject of this appeal and it urges that the application for costs is dismissed.
8. In respect of the highway reason for refusal, it is true that the access is substandard in terms of visibility splays and geometry. However, the time to address this was in 2004 when the extension was granted to the existing temporary landfill and recycling use. A refusal then would have hastened the end of the landfill and recycling operation at a substandard and potentially dangerous access. If a refusal was not possible then the numbers of HGVs could have been restricted to a lower level. Either way, implicit in the 2004 permission is the conclusion that the upper level of HGVs permitted would not create an unacceptable increase in the use of the access, albeit substandard, and would not impact inordinately on highway safety or the surrounding highway network, including the roads serving the village of South Anston.
9. As part of the appeal application it is clearly stated that the fuel stock for the CHP plant would be a bi-product of the recycling operation and that the number of HGVs using the access would not increase, but actually decrease in what can only be described as a sustainable operation. This was accepted in the Officer's report and can be secured by condition.
10. Employment at the CHP plant could increase the number of cars, but this is off-set both by the decrease in HGVs and the potential for a Green Travel Plan to foster the use of public transport in a sustainable location served by both rail and bus. I have no doubt the Officers took account of this in their deliberations and concluded that there should be no increase in overall traffic movements to and from the appeal site.
11. In this appeal, the Council proffered no counts, calculations, details of the visibility splays, geometry or accident records. Neither did it advance details of traffic volumes through South Anston. Even if there is no development plan policy that looks to safeguard highway interests, Government policy guidance is

clear on this matter. In a nutshell, the defence of the reason for refusal lacks any objectivity and is, therefore, unreasonable and put the Appellants to the unnecessary cost of responding to it.

12. As for the second reason for refusal, there is no basis for this in development plan policies cited in either the reason for refusal or the subsequent appeal statement. Crucially the reason for refusal does not seek to protect an identified interest of acknowledged importance. The Council's statement does plead that the potential loss of heat between the generating source and receptor is a material consideration. This may be so, but only if that loss impinges on an interest of acknowledged importance. This is not argued objectively. Moreover, the appeal project is not in competition with other sites and, in the absence of any policy objective, it is not up to the Council to dictate that there should be an end user. If the Appellants are content that their business will prosper solely by the production of electricity for input to the national grid, which is all the application seeks, and there is no harm to any identified interest of acknowledged importance they are entitled to their permission.
13. Moreover, the Council's reason for refusal implies that further information would allow it to reach a conclusion on this aspect. For my part, I am not clear that it was entitled to any further information in this regard. Neither am I clear exactly what information it required or for what purpose. In its defence of its position, the Council has produced no objective evidence to show that there would be harm and, as noted above, no policy objection is cited. The Officer's report draws on a raft of national and local policies that supports proposals for renewable energy and none that is aligned against projects such as this. In particular PPS22: Renewable Energy refers to the generation of energy from timber processing. With the land around in industrial use and the appeal site being a former landfill site it is just the type of location for such operations.
14. It is, of course, perfectly legitimate for the Council to disagree with its Officers. However, if this occurs then it is necessary for this decision to be justified by policy and/or objective argument. In this case, the Council's submissions do not fulfil this obligation. Thus, by not adequately supporting its reasons for refusal by presenting sufficient objective evidence, I am satisfied that the Council behaved unreasonably and put the Appellants to the unnecessary expense of this appeal and consequent delay to the project.

Formal Decision and Costs Order

15. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Rotherham Metropolitan Borough Council shall pay to Kiveton Heat and Power the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under Section 78 of the Town and Country Planning Act 1990 as amended against the refusal of an application seeking planning permission for a small scale combined heat and power (CHP) plant within a new building for the generation of renewable energy from low grade waste wood at Kiveton Recycling Centre, The Old Kiveton Quarry, Dog Kennel Hill, Kiveton Park Station, S26 6NG.
16. The Applicants are now invited to submit to Rotherham Metropolitan Borough

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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

J S Nixon

INSPECTOR