



Costs Decision

Inquiry held on 25-28 June, 2-4 July, 9-12 July and 16, 17 and 19 July 2013
Site visits made on 26 and 28 June, 18, 19 and 21 July 2013

by John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI

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

Decision date: 17 October 2013

Costs application in relation to Appeal Ref: APP/J1155/A/12/2185633 Whitecleave Quarry, Plymouth Road/Strode Road, Buckfastleigh, Devon TQ11 0DQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by MVV Environment Devonport Ltd for a partial award of costs against Devon County Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the construction and operation of a materials recovery facility for inert construction and demolition waste and construction and operation of an incinerator bottom ash processing facility together with associated site engineering and infrastructure.
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Decision

1. The application for an award of costs is refused.

The submissions for MVV Environment Devonport Ltd

2. The application is in writing and cites paragraphs B15, B16, B20, B21 and B22 of Circular 03/2009 *Costs Awards in Appeals and Other Planning Proceedings*.¹ The application is for a partial award of costs in relation to the Council's second reason for refusal.
3. Further comments were made orally at the Inquiry in reply to the Council's response. The Council's case put at the Inquiry included no analysis of waste miles or carbon emissions, which is a failure to substantiate the case argued. Furthermore, if a policy conflict is alleged it is necessary to consider whether the conflict gives rise to harm. This was not engaged by the Council.
4. There is no preclusion upon consideration of alternative sites, but it is the Council's narrow basis on which alternatives are engaged that is disputed. The appellant is not making an application for compensation for commercial matters, but for unnecessary work which caused unnecessary delay to development which is acceptable, which is the purpose of the costs regime.

The response by Devon County Council (DCC)

5. DCC's response is made in writing.²

¹ ID107.

² ID108.

Reasons

6. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.
7. DCC's second reason for refusal states; "The site is not allocated within the Devon County Waste Local Plan, and there has been inadequate consideration of alternative sites to accommodate the proposed operations, and therefore it is considered that there is no overriding need for the facility in this location."
8. The appellant had submitted evidence about alternatives to the proposed development as part of its Environmental Statement. The reason for refusal unambiguously states that DCC found this inadequate. It also makes clear that the concern related to where the facility was sited, not the underlying need for it. The reason for refusal is complete, precise, specific and relevant to the application. I consider that it was a matter of judgement for the Members whether the assessment of alternative sites was sufficient. At the appeal stage DCC produced evidence about alternatives with reference to the development plan and other material considerations. This provides a respectable basis for DCC's stance, and reasonable planning grounds for taking a decision contrary to the advice of its officers. I have come to a different conclusion about the significance of alternative sites to that of DCC, but the case submitted by DCC did not lack substance.
9. The assessment of alternative sites focussed on different sites at different times in the lead up to, and during, the Inquiry, as more information became available. This was not unreasonable. It is properly a part of the testing of evidence that should be carried out in preparing for an Inquiry. It was also relevant for DCC to focus on the minimisation of waste miles and carbon emissions as part of the assessment of alternatives. It was not unreasonable for DCC to do so in the way that it did, without undertaking a WRATE analysis comparison between the appeal site and alternatives. Third parties also suggested alternative sites at the Inquiry, and the appellant would have had to incur expense responding to these submissions irrespective of the case mounted by DCC. I am also satisfied that DCC made its own objective appraisal of the scheme, and did not rely on local opposition from third parties to support its decision.
10. Based on further work by the appellant, after DCC had refused the application, technical matters concerning amenity impacts were resolved between DCC and the appellant. Furthermore, I have found that DCC's decision did not prevent or delay development which should clearly have been permitted having regard to the development plan, national policy and other material considerations.
11. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009 has not been demonstrated. I conclude that a partial award of costs is not justified.

John Woolcock
Inspector