



Gostau ar Adroddiad

Ymchwiliad a gynhaliwyd ar 21, 22, 23, 24, 28 and 29 June 2022

Ymweliad â safle a wnaed ar 27 June 2022

gan J Burston BSc MA MRTPI AIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 19.08.22

Costs Report

Inquiry held on 21, 22, 23, 24, 28 and 29 June 2022

Site visit made on 27 June 2022

by J Burston BSc MA MRTPI AIPROW

an Inspector appointed by the Welsh Ministers

Date: 19.08.22

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77

APPEALS BY: Hanson UK Ltd

LOCAL PLANNING AUTHORITY: Rhondda Cynon Taf County Borough Council

FOR

APPEAL A: The construction of a landscape screening landform around the eastern and northern margins of the extension area; construction of a screen mound along the western boundary of the extension area; the extension of Craig yr Hesg Quarry via the phased extraction of some 10 million tonnes of Pennant Sandstone; extraction of the remaining reserves of some 5.7 million tonnes of sandstone within the existing quarry; retention of existing aggregate crushing screening plant to process sandstone from the existing quarry and extension site together with related access roads and infrastructure; use of existing approved quarry access road to the public highway; and implementation of a comprehensive restoration scheme for the application site to establish amenity grassland, woodland and nature conservation uses.

APPEAL B: Continuation of quarrying and related operations without complying with conditions 1-4 inclusive and conditions 45 and 46 imposed on the Environment Act ROMP schedule of conditions issued by RCT Council on 24th April 2013, ref 08/1380/10.

AT: CRAIG YR HESG QUARRY, BERW ROAD, PONTYPRIDD CF37 3BG

REFERENCE APPEAL A: APP/L6940/A/20/3265358

REFERENCE APPEAL B: APP/L6940/A/21/3282880

Costs application in relation to Appeal Ref: A & B

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
- The applications are made by Hanson UK Ltd for a partial award of costs against Rhondda Cynon Taf County Borough Council.
- The appeals were against the refusal of planning permission for the proposed developments set out above.

Summary of Recommendation: That the Cost applications for both Appeal A & B are allowed.

Decision

1. The applications for an award of Costs are recommended to be allowed.

Procedural Matters

2. As set out above the cost applications relate to two separate appeals for mineral extraction on the same site. I have considered each application on its individual merits. However, to avoid duplication I have dealt with the two applications together, except where otherwise indicated.

Summary of the Appellant's case

3. Mr Kimblin did not depart significantly from his written cost submissions (APP15/2). The following sets out the main points made in the Grounds of Costs application (APP15/1).
 4. The applications are for the costs of, and occasioned by, the appeals, save in respect those costs which relate to acoustic evidence and dust evidence.
 5. In the course of the appeals, the Council raised a question about background noise levels. The appellant did not accept that there was any merit in the Council's point. However, the appellant took a pragmatic view and undertook further monitoring. The result was the same as that obtained previously. The appellant provided the full evidence to the Council and invited the Council not to contest the acoustic evidence on the basis that the appellant would not seek its costs on that issue.
 6. Essentially the same point arose in respect of dust and the appellant took, and takes, the same pragmatic view.
 5. The application is for a substantive award. The refusals were unreasonable.
 7. The grounds on which an award of costs is justified in terms of Appeal A are:
 - a) The reason for refusal has been abandoned.
 - b) The Council relied on a new case in its Statement of Case because no professional witness would support refusal for the reasons given.
 - c) The new case was so different to the reason for refusal that it had to go back to the Committee.
 - d) The Council called no witness in respect of any specialism which went to the question of amenity. The Council had no case on reasonable planning grounds, and its professional planning advisors knew that.
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- e) The need for the inquiry has been driven by the members of the Council who have adopted an irrational position, i.e., a position which has not been explained by good planning reasons or supported by evidence which is to be expected.
 - f) No part of the environmental information has been contested. It is unreasonable to accept the contents of an Environmental Statement which demonstrates compliance with policy and guidance and then to refuse for unparticularised environmental reasons.
 - g) To the extent that there was a concern about buffer distances, the Council declined to use a condition to limit the extent of working to a distance which it considered acceptable. In any event, it has now abandoned that policy point.
 - h) The Council was opposed to the extension as a matter of principle. So much is clear from the refusal of Appeal B.
8. The grounds on which an award of costs is justified in terms of Appeal B are:
- a. (a) to (g) in paragraph 6 above
 - b. It was unreasonable to refuse consent to continue to work mineral reserves which are presently consented, particularly in circumstances including:
 - i. There was no identified nor any identifiable health effect, as alleged in the committee members' reasons for refusal.
 - ii. The absence of any change at all in operations as a result of the proposal
 - iii. It was open to the Council, if the relevant tests for the imposition of a condition were met, to control the winning and working of mineral in order to address any effect which would have been unacceptable.
 - iv. There were no unacceptable effects – effects were acceptable.
 - v. The effect of the refusal upon the land bank.
 - c. The Council simply opposed any continued quarrying. The committee members' position was that the quarry should close, regardless of development plan policies (which are not mentioned in reason for refusal), the evidence as to environmental effects and of national planning policy in respect of a demonstrable need.
 - d. The committee members' decision was not a planning judgement. It was a decision to refuse which was entirely unencumbered by any reasonable planning consideration.
9. In determining the costs application, the Welsh Ministers will have to decide whether they wish to signal their support for a functioning and rational planning system.
10. In rebuttal the applicant reasserted that the Council mis-understood the applicant's submissions as when the Council refused the applications they failed to have regard to the development plan. It is very clear that no planning judgement has been applied but an arbitrary decision was made to cease production at the quarry. At the Inquiry the Council's witness also failed provide evidence to support its case.
11. The Council relies upon the evidence of local residents and their political representatives. But this is not the point, as this evidence was not measured against the agreed technical reports. Therefore, the judgements made by the Council were unreasonable.

Summary of the Council's case

12. Mr Bedford did not depart significantly from his written rebuttal to the cost applications (LPA8.1). The following sets out a summary of the main points.

13. The Council disputes that an award of costs is justified in this case, whether as regards Appeal A or as regards Appeal B. The Council's determination of the Appeals was not unreasonable and in any event the decisions to refuse planning permission and the Council's actions to defend those decisions have not caused unnecessary expense. These appeals were inevitable, given the divergence of view between the Council and the Appellant on the acceptability of the proposals.
14. Obviously, the reasons for refusal are important and they should set out the 'full reasons' for the decisions and specify all policies of the development plan relevant to the decisions. However, the reasons for refusal cannot be seen in isolation because they sit within the statutory framework provided by s.38(6) Planning and Compulsory Purchase Act 2004. The omission to specify the policy breaches relied on was a process issue but, in the context of a professionally represented applicant who was perfectly aware of the statutory and policy framework, it was not unreasonable behaviour and it has not been causative of any unnecessary expense. The parties have agreed the relevant policies and have addressed them in their evidence.
15. Thus, notwithstanding the absence of references to the development plan in the reasons for refusal the applicant knew that it had to address the development plan policies and did so right at the outset of the appeal process. The fact that the parties have disagreed on whether the policies are complied with or not, and on the consequences of non-compliance, is not a process issue but a substantive merits issue and is an entirely conventional planning disagreement.
16. The evidence Mr Williams gave in re-examination shows quite clearly that he was not changing his position on the non-compliance with the LDP or on the individual policies where conflicts arose.
17. The Council had available to it at the stage of each of the determinations, the evidence from local residents and community representatives (such as the Town Council, Members of the Senedd, and ward councillors) which they were perfectly entitled to take into account and balance against the advice of their professional officers and various statutory consultees.
18. The Council was perfectly entitled as a matter of planning judgment to give that evidence more weight than the evidence put forward by the applicant or the advice given by their Officers. The Council therefore had reasonable planning grounds for rejecting both.
19. It was entirely proper for the Council to raise issues about the adequacy of some of the technical evidence on noise and dust, having sought its own independent advice, and then, once further evidence had been provided, to accept that those technical issues had been adequately addressed. In any event, those topics relate to matters outside of the scope of the costs application (which does not seek costs in relation to either acoustic evidence or dust evidence) so the criticisms go nowhere. This is not a case where the Council's concerns could be addressed or overcome by conditions.
20. The Council reiterates that its decisions were not unreasonable but in any event there has been no unnecessary expense. The appeals were inevitable given the difference of view between the Council and the applicant about the acceptability of the impacts of the development.

Reasons

11. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an appeal, costs may only be

awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.

12. In terms of the issue of substantiating the reasons for refusal, I note in this regard that the Council Officers recommended that planning permission be granted for the proposal. Whilst Council Members are not duty bound to follow the advice of their professional Officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
13. The Town and Country Planning (Development Management Procedure)(Wales) Order 2012 at 24(1) states that: *"When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters and a permission or approval is either granted subject to conditions or the application is refused, the notice must (a) state clearly and precisely the full reasons for the refusal or for any condition imposed specifying all policies and proposals in the development plan which are relevant to the decision."* (My emphasis).
14. It is therefore a failing by the Council not to include the relevant policies within its decision notices. As commented by the applicant the reference to the development plan policies in the reasons for refusal can assist an appellant in trying to understand what the decision maker was thinking. This is therefore unreasonable behaviour.
15. In failing to provide satisfactory reasons for refusal the applicant had to address issues at appeal that were later found to be unnecessary. This has resulted in unnecessary expense for the applicant in having to provide additional evidence at the appeal stage. The Council suggests that no additional expense was incurred by the applicant as, in any case, the Council still maintained that some harm would arise, and these were also raised by third parties to the appeal. I am not persuaded by these points.
16. The representations of local residents, with their local knowledge of the sites and their surroundings, emphasises the view of the Committee Members that the proposals would have an adverse effect on the enjoyment of their properties. In principle it is not unreasonable for the Council to give weight to the objections received from local residents, rather than the recommendations of its Officers to grant planning permission.
17. Even so, that concern still requires to be substantiated through evidence. The Council has gone to some length to provide evidence of those with local knowledge who have sought to challenge the evidence submitted by the applicant. Local knowledge is important and should be used to shape the delivery of development. However, there has been very little evidence submitted, beyond general supposition, to demonstrate that the technical assessments of the effect of the proposal were flawed or factually wrong. Indeed, from the various Committee Meeting minutes (CD4.1 – CD4.7) the Committee Members appear to have given little weight to the wide range of factual evidence and information presented by the applicant.
18. In my accompanying decision, I explain why I find no basis to objections to the matters raised at the Inquiry. In doing so I have assessed the proposal against the development plan, having regard to the technical evidence submitted and the representations from local residents, and have found that the proposal would comply with both the development plan, and national policy.

Conclusion

19. Therefore, I find that, having regard to the provisions of the development plan, national policy and other material considerations, the development should reasonably have been

permitted. The refusal of permission therefore constitutes unreasonable behaviour contrary to the guidance and the applicant has been faced with the unnecessary expense of lodging the appeal. Accordingly, I conclude that a partial award of costs is justified, relating to the costs of the appeals, save in respect those costs which relate to acoustic evidence and dust evidence.

Recommendation

20. It is recommended that the cost application in respect of Appeal A is allowed.

21. It is recommended that the cost application in respect of Appeal B is allowed.

J Burston

Inspector