



Penderfyniad Costau

Ymchwiliad a gynhaliwyd ar 22&23/05/12
Ymweliad safle a wnaed ar 11/06/12

gan Emyr Jones BSc(Hons) CEng
MICE MCI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06/07/12

Costs Decision

Inquiry held on 22&23/05/12
Site visit made on 11/06/12

by Emyr Jones BSc(Hons) CEng MICE
MCI

an Inspector appointed by the Welsh Ministers

Date: 06/07/12

Costs application in relation to Appeal Ref: APP/Z6950/A/11/2167112

Site address: Unit 1 Llandow Industrial Estate, Cowbridge CF71 7PF

The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.

- 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 Coastal Oil and Gas Limited for a full award of costs against The Vale of Glamorgan Council.
 - The Inquiry was in connection with an appeal against the refusal of planning permission to drill and test the insitu lower limestone and associated strata for the presence of gas.
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Decision

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

The submissions for Coastal Oil and Gas Limited

2. The costs application was submitted in writing. The following additional points were made orally.
3. The Council's response states that "The Council would also agree with the appellant's position that there appears to have been no communication between DCWW and EA during the consultation process." The Council had not passed information on the EA (Environment Agency) position to DCWW (Dŵr Cymru/Welsh Water). It is not right that DCWW, who had always caveated its responses, should go the EA - that would be the long way around, and the Council was in full receipt of all the information.
4. It was put to both of the appellants' witnesses that DCWW was important as a statutory undertaker and that the appellants had gone out of their way to satisfy the concerns raised. The fact that the appellants sought to satisfy these concerns in no way changes the status of DCWW or the reasonableness of the Council's position in relying on DCWW. The Council's witness accepted that there was no evidence by DCWW throughout the process to substantiate its concerns. Given the committee's stance, it was reasonable to attempt to quell these concerns, that is not the same as stating that DCWW was important in the process.
5. The attempt made did not satisfy the committee in any event, the committee was not dealing with anything new as the DCWW concerns were duly noted in the report. It stood to reason that what the officer was stating applied to the 19th October letter as well as the previous one. Members still decided to place DCWW's concerns above

anything else. The Council's position was wholly reliant on DCWW – but how could it rely on or expect support from DCWW when DCWW had subordinated their position to the EA. DCWW had never hinted at an evidence base for its assertions.

6. The appellants never said that the concerns should not be taken into consideration. It is agreed that, on a plain reading, policies do not preclude other views, but signpost how to deal with technical matters, in this case in a groundwater context, and when decision makers can satisfy themselves that standards have been met. On a reasonable interpretation it is an inevitable conclusion that there are no groundwater issues. Whilst the response addresses the point of meetings held after the refusal, DCWW had all the tools needed, as did the Council, to come to the conclusion reached in March of this year much earlier.

The response by The Vale of Glamorgan Council

7. The response was made in writing.

Reasons

8. Circular 23/93 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.
9. The Council confirms that it was wholly reliant on DCWW to support its case in this appeal. At the time planning permission was refused, DCWW, after receiving additional information from the appellants, still believed that there would be a very small risk of contamination of their reserve groundwater sites from the proposed exploratory drilling. They also indicated that this level of risk would increase if there was an excessive loss of drilling fluid to the aquifer during the drilling procedure due to unforeseen geological features being met. However, they have subsequently confirmed that this did not amount to an objection.
10. It is also of some significance that DCWW expected the EA to consider the vulnerability of the groundwater sources and wider impact upon the water environment as part of the permitting process. I do not accept the Council's contention that it could reasonably be expected that DCWW should have raised any concerns directly with the EA, if they were relying on the EA to protect their interests. Both parties were responding to consultations on a planning application and it is the role of the local planning authority to invite, receive and assess such responses.
11. Although not a statutory consultee, DCWW are a water company which has groundwater resources in the area and, therefore, a direct interest in protecting the quantity and quality of surface and groundwater supplies. As a result, any concerns raised by them should not be set aside lightly and neither *Mineral Planning Policy Wales* nor the supporting text to UDP policy ENV 29 preclude taking account of views beyond those of the relevant regulatory authorities. Nonetheless, DCWW's expectation of the EA as the relevant regulator effectively defers to the Agency.
12. The response from the Agency, even after the Council's request for further confirmation, was that it did not have any objection to the proposal, as submitted, on the proviso that its requested planning conditions were included on any planning permission granted. This demonstrates that pollution could be controlled to the satisfaction of the regulatory authorities. In such circumstances, the supporting text to UDP policy ENV 29 indicates that permission may be granted subject to conditions.

13. This was supported by Council's own professional officers with the committee report indicating that issues of water resource protection from a single exploratory borehole are likely to be limited and stating that the potential impacts of drilling on groundwater would be acceptably managed.
14. Circular 23/93 states that planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers, or received from statutory bodies or consultees. But they will be expected to show that they had reasonable planning grounds for taking a decision contrary to such advice; and they were able to produce relevant evidence to support their decision in all respects. In considering whether the Council was able to produce relevant evidence to support its case, the evidence does not have to be persuasive. The test to apply is whether it had substance in the sense of providing a respectable or sufficient evidential basis for the stance taken.
15. The committee latched onto DCWW's concerns of a very small risk of contamination of their reserve groundwater sites and the evidence does not show that these concerns were properly balanced against considerations which pulled in a different direction. These comprise DCWW's effective deferral to the relevant regulator; the stance of the EA as that regulator and a statutory consultee, even after the Council requested further confirmation; and the assessment of the Council's own professional officers.
16. The evidence submitted does not, therefore, provide a respectable or sufficient evidential basis for the stance taken that sufficient doubt existed for the precautionary principle to be applied. As a result, the Council's behaviour was unreasonable in that it prevented, inhibited or delayed development which could reasonably be permitted, in the light of the development plan, so far as it is material to the application, and of any other material considerations. This unreasonable conduct has resulted in the appellants incurring or wasting expense unnecessarily because it should not have been necessary for the matter to have been determined on appeal.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 23/93, has been demonstrated and that a full award of costs is justified.

Costs Order

18. 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 The Vale of Glamorgan Council shall pay to Coastal Oil and Gas Limited, the costs of the appeal proceedings described in the heading of this decision.
19. The applicant is now invited to submit to The Vale of Glamorgan 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 Senior Courts Costs Office is enclosed.

E Jones

Inspector