



BACKGROUND

Pathfinder Legal Services Limited instructed Counsel for an appeal against the Cambridgeshire County Council's decision to refuse an application for planning permission for the construction of a dry anaerobic digestion (AD) facility, pellet fertiliser facility, healthcare waste energy recovery facility and associated development at Envar Composting in St Ives, Cambridgeshire.

The Council's reason for refusal was the harm to amenity and landscape caused by the proposed development. Matters of perception of harm were raised as a material planning consideration to be given weight in the planning balance as part of the Council's case at inquiry.

An environmental impact assessment was undertaken as part of the application process. The Council also commissioned an independent report on air quality impacts by an independent consultant. The development was deemed to be compliant with the requirements of the Town and Country Planning (Environment Impact Assessment) Regulations 2017.

WHAT IS A MATERIAL PLANNING CONSIDERATION?

It is necessary to turn to what constitutes a material planning consideration.

Section 70(2) Town and Country Planning Act 1990 requires the decision maker to have regard to any other material considerations in determining an application for planning permission. The scope of material planning considerations is wide and must have a planning purpose that relates to the character and use of the land. It must fairly and reasonably relate to the proposed development under consideration.

DECISION OF THE SECRETARY OF STATE

In the appeal decision the Inspector found that the scientific tests and appropriate assessment carried out met the requirements set out in the Town and Country Planning) Environmental Impact Assessment Regulations 2017.

The Inspector found that there was no compelling scientific basis to find the level of health and safety risks to be unacceptable. He then went on to state in his decision letter at paragraph 12.61;

"That said, the collective local community and business owners' views offer very real day to day, and I believe genuine concerns on how they perceive the appeal scheme



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would impact on their lives and livelihoods. I acknowledge that perception matters are material.”

The Secretary of State’s decision letter agreed with the Inspector’s findings that the proposed development, subject to the design and mitigation that would be required by the Environmental Permit, would be unlikely to result in adverse impacts on air quality, or any associated impacts on human health or the environment. Planning permission was granted for the development.

OUTCOME

The decision letter from the Secretary of State also acknowledged that the perception issues raised were material. The perceived health and wellbeing and business impact harms arising from the development were given limited weight in the planning balance.

Previous planning appeal decisions have given weight to the perception of harm as a material consideration to be weighed in the planning balance. This applies to a wide range of considerations. For example, perception of townscape harm or fears over anti-social behaviour have been accepted as material considerations in planning appeals.

It will be comfort to those affected by any proposed development that perception of harm can be weighed as a material planning consideration in the planning balance. In the present case the perception of harm was given limited weight by the Inspector. It will be interesting to see the weight to be attributed to perception in other appeals and the factors to be taken into consideration. Will a higher level of weight be placed on the perception of harm in the planning balance?

At a time when there is increased scrutiny relating to the effect of new developments on public health the perception of harm could play an increasingly important role as part of the consideration of the planning application.

About Pathfinder Legal Services Ltd’s Planning and Highways Team

Planning and Highways is an area of law which impacts on everyone in the community but is rarely recognised until something goes wrong. Members of the public often expect rapid response times to complaints about pot holes, planning permission which has been granted in their local area or highways closures and Pathfinder Legal Services understands the importance of providing practical and timely advice on these matters. With the benefit of extensive legal expertise combined with a keen knowledge of historical detail and a solid understanding of legal principals, our team are able to guide you through all aspects of planning and highways law, taking into account the different duties and responsibilities of our clients.

About Pathfinder Legal Services Ltd

As a ‘social enterprise law firm’, Pathfinder Legal Services Ltd is one of the first of its kind to be established in the UK and is wholly owned by Cambridgeshire County and Central Bedfordshire Councils. We are experts in our field and provide a tailored legal service exclusively to the public and not-for-profit sectors, our clients are key, and our fees reflect this: our charging rates are substantially reduced and our billing system transparent. Our credibility, values and focus remain paramount to all that we do as a publicly owned legal service provider, with clients including Local Authorities, Integrated Care Boards, Foundation Trusts, Charities and Fire Services. In 2021 the firm was awarded ‘Law Firm of the Year’ (under its previous trading name of LGSS Law Ltd) at the prestigious Cambridgeshire Law Society’s legal awards.

If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at operations@pathfinderlegal.co.uk

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