
Costs Decision

Site visit made on 9 September 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 11 October 2016

Costs application in relation to Appeal Ref: APP/E1855/X/16/3147848 Waste Incinerator, Hangmans Lane, Hanley Castle, Worcs, WR8 0AJ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Peter Styles for a full award of costs against Worcestershire County Council.
 - The appeal was against refusal of a certificate of lawful use or development for use for Sui Generis: Waste Treatment /incineration
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Decision

1. The application by Mr Peter Styles for a full award of costs is allowed in the terms set out below.

Summary of Submissions for Mr Peter Styles

2. The County Council has been unreasonable because they have not addressed the actual issues in the appeal or provided any physical evidence under their control. They have neither answered nor rebutted statements of fact and the refusal certificate offers no explanation of the decision made.
3. The County Council has addressed the wrong issues and has addressed the wrong period of time as if the appeal was an enforcement case rather than a site with a deemed lawful planning consent.
4. Moreover as waste authority it is their responsibility to understand and know the planning history of the site and how the incineration plant came into being. It is inconceivable that the Council has no documentation for the incinerator site and cannot provide any minutes concerning the mothballing of the plant by a County Council enterprise trading as Beacon Waste.

Summary of submissions for Worcestershire County Council

5. The Council's response was invited on three occasions including my request after the site visit. However on 14 September 2016 the County Council confirmed that they did not wish to make any comments on the application for costs.

Reasons

6. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, in either procedural or substantive ways,
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and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process¹.

7. As I have noted in the appeal decision the County Council appears to have misunderstood and misconstrued the application for a Lawful Development Certificate. Consequently it assessed the application against the wrong time period. The evidence, which does not appear to be disputed, is that the incineration use commenced in 1972 and ceased in 1995, an uninterrupted period of about 23 years. Thus by 1995, whether or not there was a planning permission in place, the use became lawful.
8. Although the onus of proof on matters of fact is on the applicant it is surprising that the County Council was unable to draw on any information to respond to the applicant's evidence. However I do accept, given the change in ownership between successive Councils that it may be that such records have not been retained. Nonetheless it would have been helpful if the County Council had confirmed whether or not any records existed. Whatever the reason, there was no information provided to counter the applicant's evidence which appeared to be both reasonable and plausible. It seems highly improbable that a specialist incinerator paid for out of public funds would be constructed without planning permission and the County Council does not appear to have investigated this matter which was an important factor in the appeal.
9. Neither did the Council respond to the applicant's evidence as to whether or not the lawful use was 'lost' after Beacon Waste ceased their operations.
10. In these circumstances, and in the absence of substantive evidence to support the refusal of the LDC, I consider that this appeal should not have been necessary. Consequently the applicant has had to bear the costs of an appeal because of unreasonable behaviour by the County Council. Bearing in mind the failure of the County Council to make any cogent response to the costs claim I am bound to make a full award of costs against the authority.

Costs Order

11. 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 powers in that behalf, IT IS HEREBY ORDERED that Worcestershire County Council shall pay to Mr Peter Styles the full costs of the appeal proceedings described in the heading of this decision. Such costs also include the preparation of the costs claim.
12. The applicant is now invited to submit to Worcestershire County 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.

Sukie Tamplin

INSPECTOR

¹ ID16-028-20140306: National Planning Practice Guidance (PPG)