

Costs Decision

Inquiry held on 22-25 and 29-30 November and 1 December 2016

Site visit made on 2 December 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 02 March 2017

Costs application in relation to Appeal Ref: APP/Y2620/W/15/3134132

Pond Farm, Bodham, Holt

- 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 North Norfolk District Council for a full award of costs against Genatec Limited.
 - The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for the erection of a single wind turbine with a maximum hub height of 40 metres and a maximum tip height of 66 metres, associated infrastructure, single storey substation building, access tracks and crane hardstanding.
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Decision

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

The submission for North Norfolk District Council

2. The costs application was submitted in writing. No additional points were made orally.

The response by Genatec Limited

3. The response to the costs application was made in writing. No additional points were made orally.

Reasons

4. Planning Practice Guidance (PPG) 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 expense in the appeal process.

5. The Council maintains, in essence, that the appeal had no chance of success and was therefore unreasonably submitted, because the actual benefits of the proposed development could not, even on the Appellant's own assessment of harm to the significance of heritage assets, outweigh that harm given the strong presumption against the grant of planning permission afforded by Section 66(1) of the Act. But the assessment of harm to the significance of heritage assets, and to landscape character and visual amenity, was made by professional witnesses and it is not unreasonable for these professionals to disagree on the degree of harm caused. In this regard the assessment is subjective.

6. Furthermore, whilst some of the benefits claimed for the development do not qualify as benefits, the weight to be given to the benefits that are applicable in the
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planning balance is a matter of planning judgement. It would not, in fact, have been unreasonable for the Appellant to rely solely on the environmental benefit of the renewable energy project to outweigh the accepted harm to the significance of heritage assets. Again, it is not unreasonable for professionals expressing a view on the weight to be given to benefits and on the planning balance to differ in the planning judgements that they have made.

7. There is indeed, as the Council maintains, a strong presumption against the grant of planning permission where the development would cause harm, even less than substantial harm, to the significance of a heritage asset. There is no evidence to indicate that those who have expressed a view on the planning balance have not taken this factor into account and have, as the Council suggests, misapplied case law. It is not unreasonable for the Appellant to have concluded that the planning balance is in favour of the grant of planning permission, notwithstanding the strong presumption against the grant of planning permission.

8. The main issues in this case require subjective judgements to be made and the weight to be afforded to environmental and other benefits in the planning balance is a matter of planning judgement. In these circumstances it was not unreasonable for the Appellant to pursue the grant of planning permission for the proposed wind turbine through the appeal process. The Appellant did not act unreasonably in submitting the appeal and the Council's claim for a full award of costs thus fails.

John Braithwaite

Inspector