
Costs Decision

Site visit made on 25 September 2020

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Costs application in relation to Appeal Ref: APP/U1105/W/19/3234261 Enfield Farm Biodigester, Oil Mill Lane, Clyst St Mary, EX5 1AF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr David Manley Ixora Energy Limited for a full award of costs against East Devon District Council (EDDC).
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

The submissions for Mr David Manley Ixora Energy Limited

2. In summary, the costs application seeks a full award of costs principally on the grounds that EDDC proceeded as if it were the relevant authority to determine plant noise and odour matters when these are matters within the jurisdiction of the Environment Agency. There was sufficient information for EDDC to grant planning permission. The reason for refusal is vague and generalised with inaccurate assertions unsupported by any objective analysis. Increased infrastructure to process the increased inputs was granted planning permission by EDDC. Development plan policies have been misapplied.

The response by East Devon District Council

3. In response EDDC, in summary, considers that the impacts of odour and noise are material considerations in the planning process. The reason for refusal cites insufficient information to determine that the impact of increased traffic movements would not have a detrimental impact on nearby residents. It is not vague or generalised. It is also clear why the policies referred to have been applied.

Reasons

4. The National Planning Practice Guidance advises that costs may 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.
5. EDDC refused permission for the appeal application because insufficient information had been submitted to demonstrate that the increase in throughput

- of the digester and scale of operations, without any increased infrastructure to process the increased inputs, would not have a detrimental impact upon its surroundings through noise and smell disturbance together with the impact of increased traffic movements on nearby residents.
6. It was not unreasonable of EDDC to take into account the likely effects of odour and noise on the amenity and well-being of nearby residents in considering the planning merits of the terms proposed for Conditions 5, 7 and 10. The reason for refusal is clear that the proposal had not demonstrated that the increase in the scale of operations would not have a detrimental impact upon its surroundings, which include nearby dwellings. For the reasons set out in my Appeal Decision, I have come to the same conclusion. I have also found the proposal to be contrary to the development plan and at odds with national policy and guidance. EDDC did not prevent or delay development that should have been permitted having regard to the development plan, the National Planning Policy Framework and material considerations.
 7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the National Planning Practice Guidance, has not been demonstrated and the application for an award of costs does not succeed.

John Woolcock
Inspector