



Costs Decision

Site visit made on 7 December 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Costs application in relation to Appeal Ref: APP/Y1138/W/20/3259142 Lloyd Maunder Road, Willand, Cullompton EX15 2PJ

- 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 Amzco Development Ltd for a full award of costs against Mid Devon District Council.
 - The appeal was against the refusal of planning permission to install a 24MW Reserve Power Plant with associated infrastructure.
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Decision

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

Procedural Matter

2. I have treated the application as seeking a full award of costs based on the details and range of case made in the submissions.

Reasons

3. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The applicant has explained, in summary, that the Council has acted unreasonably by refusing the application on the basis that it would not generate renewable energy and did not have due regard to the definition in the National Planning Policy Framework (the Framework). It is said that the Committee was confused about the drawing of biogas from the national grid versus drawing natural gas and therefore relying on fossil fuels. The applicant produced a note to clarify this but this does not appear to have been taken into account by the Committee. The Committee took a very narrow interpretation of what constitutes renewable energy to solely mean generation and this was unreasonable given the efforts that had been made and the advice of planning officers on this matter. The Committee did not take a rounded view and seemed confused regarding traffic movements associated with the adjoining Anaerobic Digestion plant.
5. The concerns with the gas supply were capable of being dealt with by condition and this would have prevented the need to refuse the application. The Council disregarded the officer advice that a certification and robust monitoring scheme would address this matter. This was unreasonable behaviour and the appeal could have been avoided if the correct and reasonable approach had been taken.

6. The Council has responded to explain that the Council Members took account of a number of factors in reaching their decision. The consideration of whether the proposal was genuinely about the production of renewable energy was valid particularly when taking account of Government advice and policy, and the responsibilities of Mid Devon District Council's involvement in the Devon Climate Emergency Response Group with a commitment to reduce carbon emissions with a view to becoming carbon neutral by 2030. The Committee did take account of the definition of renewable energy in the Framework.
7. Furthermore, the Council explain that the Members had read the supporting information provided by the applicant. It should be noted the information supplied at times was confusing with the introduction of new elements to the proposal such as storage of energy and the use of batteries, during the lifetime of the application. Furthermore, the applicant's own submission had initially stated that it would be supplied by natural gas.
8. It is argued that the Committee were perfectly entitled to take a different view to the recommendation and they were firmly of the view that the concerns over the renewable energy production and use of that energy could not be overcome by the imposition of a planning condition. Consequently, the case is made that the Council has not been unreasonable in its decision.
9. In examining these matters, it is not unreasonable for the Committee to come to a different view on the planning merits to the recommendation in a planning report providing a reasoned and satisfactory planning case can be made. In this case, the Council made the decision on the basis that the Reserve Power Plant (RPP) should not be considered as producing renewable energy. As a consequence, the site did not meet with the strategic approach to the location of development as set out in the development plan. Given this fundamental position it was not unreasonable to come to a view that other material considerations, including conditions that could be attached to any approval with regard to the source of the gas, could not overcome this policy objection. I am not persuaded that the Committee misunderstood this fundamental point.
10. These considerations are a matter of judgement and I consider that the Council exercised its development management functions in respect of the application in a reasonable way. The evidence submitted at the appeal stage was adequate to support the decision of the Council. It will be seen from the decision that I largely agree with the Council's view on whether the RPP would produce renewable energy, although taking all other considerations into account, I found that the balance falls in favour of approval.
11. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably in this case and the appeal could not have been avoided. Accordingly, the appellant was not put to unnecessary or wasted expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn INSPECTOR