



Costs Decision

Site visit made on 8 September 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2021

Costs application in relation to Appeal Ref: APP/E2001/W/21/3275091 Land off Killingwoldgraves Lane, Beverley HU17 8QX

- 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 Lovel Capital Projects Ltd for a full award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of planning permission for Erection of a petrol filling station and ancillary shop, electric vehicle charging and associated parking areas and landscaping following outline planning permission 20/00541/OUT (Appearance, Landscaping, Layout and Scale to be considered).
-

Decision

1. The application for an award of costs is permitted in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant considers that the Council has acted unreasonably by not producing any reasonable and proper evidence to substantiate its reason for refusal instead relying in a single paragraph setting out a vague, generalised assertion about the proposal's impact.
4. The previous granting of outline planning permission on the appeal site shows that the Council have already accepted the principle of a filling station on the appeal site close to the boundary with Killingwoldgraves Lane with the overall redevelopment of the wider site not having an unacceptable impact on the character and appearance of the area and its landscape.
5. The Council's officer report also sets out in some detail the reasons as to why they recommended approval of the proposed development. It is also clear from the evidence before me that the members of the planning committee also did not undertake a site visit before making their decision to go against officer

advice and refuse planning permission. Furthermore, at appeal the Council have not provided any substantive evidence to support their reason for refusal.

6. Consequently, while I acknowledge that it is within the democratic remit of members of a planning committee to make a planning decision against the advice of its officers, it is clear from the Guidance that such a decision should be clearly justified by evidence that supports it.
7. For the above reasons I conclude that by making a decision on this basis, the Council left the appellant with no option other than to lodge the appeal. Therefore, I find that the Council behaved unreasonably with respect to the substance of the matter under appeal.
8. Accordingly, in the overall planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the Guidance and the appellant has been faced with the unnecessary expense of lodging the appeal.
9. As a result, I find the Council has behaved unreasonably by producing vague, generalised, or inaccurate assertions about the impact of the appeal proposal which are unsupported by any objective analysis. I also find unreasonable behaviour in the Council's failure to produce adequate evidence to substantiate the reason for refusal on appeal.
10. I therefore conclude that substantive unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is justified.

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 enabling powers in that behalf, IT IS HEREBY ORDERED that East Riding of Yorkshire Council shall pay to Lovel Capital Projects Ltd, the full costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to East Riding of Yorkshire 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.

C Coyne

INSPECTOR