
Costs Decision

Site visit made on 8 October 2014

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 24 October 2014

**Costs application in relation to Appeal Ref: APP/Y2736/A/14/2222762
Ellis Patents Ltd, High Street, Rillington, Malton, YO17 8LA**

- 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 Ellis Patents Ltd for a full award of costs against Ryedale District Council.
 - The appeal was made against the refusal of planning permission for a fuel oil tank.
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Decision

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

Reasons

2. Planning Practice 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.
 3. Paragraph 049 (Reference ID 16-049-20140306) of the guidance sets out examples of types of behaviour that may give rise to a substantive award of costs against a local planning authority, although the examples listed are not exhaustive. The examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations (bullet point 1).
 4. The applicant indicates that the appeal should not have been necessary, and the application to the Council was refused without proper and substantive grounds on which to base a valid reason for refusal. The applicant suggests that the Council gave vague, generalised or inaccurate assertions about impact, unsupported by any objective analysis, contrary to bullet point 3 of paragraph 049 of the guidance. The applicant says that the committee departed from the advice of their officers without a proper and rational basis for doing so.
 5. However, the reason for refusal sets out the committee's judgement about the impact of the tank on neighbouring properties on account of its siting, design and location. The reasons were expanded, albeit briefly, in the Council's appeal statement.
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6. Although the tank is not located immediately adjacent to the boundary with nearby dwellings, I found that the strip of intervening landscaping is not well established as indicated by the applicant. There is a largely open aspect between the tank and the closest dwelling, so that the tank appears prominent from the garden and ground-floor windows.
7. Given the very close planting of some saplings immediately next to the tank, and the dead or dying state of some in the intervening area at the time of my site visit, I could not be certain that the existing planting scheme was adequate to screen the existing tank from nearby dwellings in a satisfactory manner. I also found that the site of the former tank was closer to the industrial buildings and further from the dwellings.
8. I am therefore satisfied that the committee exercised reasonable judgement about the development. Although I came to a different conclusion from the Council, having considered that a condition could be imposed that would address the matter of landscaping and screening, I do not find the Council's decision to be unreasonable.
9. The proposed development should not have clearly been permitted having regard to its accordance with the development plan, national policy and other material considerations. I therefore do not find this matter constitutes grounds for the award of costs.
10. To conclude, there are insufficient grounds to demonstrate that the appeal could have been avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Sue Glover

INSPECTOR