The Planning Inspectorate

Costs Decision

Site visit made on 21 September 2016

by M Seaton DipTP MRTPI

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

Decision date: 17 October 2016

Costs application in relation to Appeal Ref: APP/Y2003/W/16/3149070
Stoneledge Ltd, Middlegate Lane, Elsham, North Lincolnshire, DN20 0NU

- 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 Stoneledge (South Bank) Ltd for a full award of costs against North Lincolnshire Council.
- The appeal was against the refusal to grant planning permission for the use of land for the open storage of hardcore, plant and equipment; the storage of demolition material; the crushing, grading and washing of aggregate and access; the installation of plant for the crushing, grading and washing of recycled aggregate; and a wheel-wash facility without complying with a condition originally attached to planning permission Ref WD/2015/0314, dated 21 October 2015.

Decision

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

Reasons

2. The 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.

3. The applicant has highlighted that the application for costs is against the Council's refusal of planning permission for a matter which it is contended could have been quite capable of being addressed satisfactorily by condition, and that inadequate evidence has been produced in order to substantiate the reason for refusal.

4. It has been highlighted that the decision of the Council was reached contrary to the recommendation of planning officers. Whilst I accept the Council's point that it is not bound to adopt the professional advice of officers in its decision-making, it must be able to provide a substantiated contrary position to refute any technical evidence and analysis provided by the applicant, and in the case, the Council's Highways Team. In this respect, I am satisfied that it was clear from both the Highway's Team and the applicant's submissions that the use of a condition was considered to be an appropriate way of securing a safe means of access by means of maintenance of the visibility splays.

5. I have ultimately concluded my satisfaction with this stance. However, I do accept that the condition proposed by the Council in the recommendation to the planning committee, would have placed an unreasonable and unenforceable requirement on an unrelated third party. Furthermore, subsequent to the Council's decision, I am satisfied that the reason for refusal was reasonably expanded upon in the Council's appeal evidence in a concise yet clear manner in explaining that the wording of the proposed condition, and the apparent assertion by the third party of the intention to maintain the visibility splay would not, as I have also concluded, have been sufficient in itself to ensure the appropriate maintenance of the splay for safe use. This is in contrast to the condition subsequently suggested by the applicant during the course of the appeal proceedings, which I am satisfied would achieve this objective.

6. Nevertheless, I am mindful that the application to determine placed before the Council was for the deletion of the original condition, and that the Council did not have the acceptable replacement condition in front of it until later on during the course of the appeal. As a consequence, I do not consider that the Council acted unreasonably at the time of determining the planning application based upon the evidence which it had before it. Therefore, on the basis of the applicant's contention and reasoning, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

M Seaton

INSPECTOR