
Costs Decision

Site visit made on 20 March 2017

by Simon N Hand MA

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

Decision date: 30 March 2017

Costs application in relation to Appeal Ref: APP/M3645/X/16/3151873 Stubpond Fisheries, Stubpond Lane, Newchapel, Lingfield, RH7 6HU

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Sweeney for an award of costs against Tandridge District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the use of the land for the crushing of concrete and similar material, with a mechanical concrete crusher (in addition to the lawful use of the land for the storage of plant, machinery and building materials as confirmed under application TA/2004/1802).
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Decision

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

The Case for the Parties

2. The appellant argues that the application has lain undetermined for a number of years without any explanation from the Council. Had the application been refused the appellant would have had certainty as to why a decision had been reached which would have informed the decision as to whether to appeal or not.
3. The Council accept the application was not determined but claim the appellant's agent was informed that it was a County matter and so not within their jurisdiction. They say the appellant was not prevented from carrying on the business and the appeal has only arisen because the County Council are seeking to enforce their notice against the storage of waste.
4. The appellant denies his agent was made aware this was a County matter and argues that whatever the rights and wrongs of that argument, the application was validated but never determined.

Reasons

5. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who have behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. I agree the application was validated and never determined and no reason as to why has ever been forthcoming. There is no written evidence that the agent

was informed it was a County matter, and even if he was, the appellant is correct that the application still needed to be dealt with, if only to formally inform the applicant it was not going to be decided. The failure to do so clearly seems to be unreasonable behaviour to me.

7. However, the question as to whether the appellant was put to any unnecessary expense is a different matter.
8. There is an internal e-mail, dated 19 February 2009, from the County Council to Matthew Barks at the District Council. That Council had asked the County for comments on the 2008 application and the e-mail suggested that as it was a County matter it should be dealt with by the County. Nevertheless, in August 2010 Mr Barks e-mailed the appellant's agent, Mr Brett, apologising for the long delay and asking a series of factual questions about the crushing operations. Mr Brett has no recollection of receiving that e-mail, but there is no explanation to suggest why it failed to arrive. Whatever happened, no reply was made to the e-mail and the application was not dealt with by either Council. However, there is no record or any suggestion that the appellant or his agent followed up the non-determination of the application, they seemed entirely incurious as to what was happening. It seems the appeal was only made because the County Council are seeking to enforce the extant enforcement notice that prevents the deposit of waste material on the site.
9. Of course the fact remains that when it became expedient to pursue the appeal the appellant did not know what either Council thought of the strength of their argument. However, the District Council's representations to the appeal make it clear they rely largely on a number of circumstantial points; that officers visiting the neighbouring site did not notice anything, that the County Council did not notice anything in 1990 and the permit for the crusher was not applied for until 2010. I would conclude that had the application been refused on the basis of those arguments the appellant would have been bound to appeal. Consequently, he was not put to the unnecessary expense of an appeal.

Simon Hand

Inspector