



Costs Decision

Site visit made on 25 January 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Costs application in relation to Appeal Ref: APP/Q2500/W/21/3276450 Reed Point, Spalding Road, Sutterton PE20 2EP

- 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 Envirotyre UK Ltd for a full award of costs against Lincolnshire County Council.
 - The appeal was against the refusal of planning permission to vary condition 2 of planning permission B18/0167/15 (approved plans) – to create an additional external storage area without complying with a condition attached to planning permission Ref B/16/0217 (LCC Ref No B18/0217/16), dated 9 August 2016.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Paragraph 49 of the PPG states that Local Planning Authorities are at risk of an award of costs where there is a *"failure to produce evidence to substantiate each reason for refusal on appeal"* or where there are *"vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis"*.
4. While I have not agreed with the Council's concern about the effect of the permanent storage of tyres outside on the character and appearance of the area, this is essentially a matter of subjective planning judgment. In this case, I am satisfied that the Council did substantiate this part of the reason for refusal. To this extent, no unreasonable behaviour has been demonstrated.
5. However, the Council's reason for refusal relating to fire and pollution from the storage of outside tyres has not been reasonably substantiated. The evidence is that the site operates on the basis of a permit from the Environment Agency and this already includes the storage of tyres outside, albeit that the existing planning permission includes a condition requiring such tyres to be moved inside at certain times. Lincolnshire Fire and Rescue Service (LFRS) were consulted in respect of the s73 planning application and no comments were received. I agree with the appellant that had LFRS had concerns about the proposal from a fire point of view, it is reasonable to take the view that they

would have provided a consultation response. A consultation response was not forthcoming from LFRS.

6. Comments have been made by the Council about the potential for arson or tyres setting fire due to '*extreme heat during hot weather*' or from '*Chinese lanterns*'. Tyres are not prone to self-ignition due to hot weather as they must be heated to at least 400 degree Celsius for a period of several minutes prior to ignition. In this regard, the Council's comment about tyres setting fire due to extreme heat during hot weather is not reasonably substantiated or indeed accurate. The potential for a Chinese lantern to land on the site is of course remote. Furthermore, it is likely that if one did land on the site it would no longer be ignited and, even if it were still ignited it would unlikely heat tyres to the sort of temperature needed for a fire to take place.
7. In respect of the potential for arson, there is of course always a theoretical possibility of that happening. However, in this case the site includes security fencing, lighting, CCTV and there is surveillance from nearby houses. I find that the Council has exaggerated the potential for an arson attack and in this regard the reason for refusal is not reasonably substantiated.

Conclusion

8. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. Therefore, the application for an award of costs is partially allowed

Costs Order

9. 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 Lincolnshire County Council shall pay to Envirotyre UK Ltd, the costs of the appeal proceedings limited to those costs incurred in respect of preparing for and responding to matters relating to fire and pollution matters; such costs to be assessed in the Senior Courts Costs Centre if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to Lincolnshire County 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.

D Hartley

INSPECTOR