



The Planning Inspectorate

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Direct Line:
Customer Services:



Mr Jon Davies
Long Leys Residents Association

Your Ref: LLRA/SVAG

Our Ref: APP/Q2500/W/17/3181477

Date: 10 April 2018

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 AND 322
LAND AT VEOLIA, ALBION WORKS, LONG LEYS ROAD, LINCOLN : APPEAL BY
VEOLIA ES (UK) LTD : APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspectorate's letter of 18 January 2018 confirming the withdrawal of the above appeal. The appeal was against the Council's decision of 30 September 2016 to refuse planning permission to demolish an existing building, construct a new building and operate a waste transfer station, including the production of refuse derived fuel, with associated development including a new weighbridge, relocation of existing wash bay, diesel tank and re-alignment of existing fence line on land described above.

2. This letter deals with your application on behalf of Long Leys Residents Association (LLRA) as a Rule 6 party in the appeal, for an award of costs against the appellants, made in correspondence of 2 and 6 February 2018. The appellants' responded on 6 February 2018. As these representations have been disclosed to the parties it is not proposed to summarise them in any detail. They have been carefully considered.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 12 and 13 below. The application succeeds to the extent that a partial award of costs is being made against the appellants.

Basis for determining the costs application

4. In planning appeals, the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are only awarded on the grounds of

“unreasonable” behaviour, resulting in any wasted or unnecessary expense. The application for costs has been considered by reference to the Planning Practice Guidance on awards of costs (as published on the Gov.uk website under “Appeals”), the appeal papers, the correspondence on costs and all the relevant circumstances.

Reasons for the decision

5. All the available evidence has been carefully considered. The decisive issue is whether or not the appellants acted unreasonably by withdrawing the appeal when they did with the result that LLRA incurred wasted or unnecessary expense in resisting it. The guidance in paragraph 054 of the guidance is particularly relevant. The sequence of events leading to the withdrawal of the appeal has been carefully examined.

6. The appeal was received by the Inspectorate on 2 August 2017. The Inspectorate’s letters of 23 August 2017 informed the parties that the appeal would be dealt with by the Inquiry procedure. The letter to the appellants’ agents warned of the risk of costs being awarded if an appeal is withdrawn without good reason and directed them to the costs guidance which could be found on GOV.UK. The parties were notified on 20 September 2017 that an Inquiry had been arranged to take place on 27 February 2018. LLRA requested Rule 6 status on 21 September which was confirmed by the Inspectorate on 22 September 2017. LLRA’s statement was received by the Inspectorate on 19 October 2017. The appeal was withdrawn on 18 January 2018.

Conclusions

7. Paragraph 054 of the PPG warns that, if an appeal is withdrawn without any material change in the planning authority’s case or any other material change in circumstances, relevant to the planning issues arising on the appeal, appellants are at risk of an award of costs against them if there are no other exceptional circumstances and the claiming party can show that they have incurred quantifiable wasted expense as a result. The Secretary of State has to decide whether the appellants had good reason for the withdrawal due to a material change in circumstances relevant to the planning issues arising on the appeal, or whether there are any other exceptional circumstances.

8. In this case, the appeal was withdrawn some 5 months after it was submitted. The appellants’ decision to withdraw the appeal when they did needed to be weighed against the risk of an award of costs. This risk was brought to the appellants’ attention, in procedural correspondence from the Inspectorate. The view is taken that the appellants would, or should, have been aware that by withdrawing the appeal when they did LLRA would have incurred costs in preparing to resist it at the cancelled Inquiry.

9. The reason given by the appellants for withdrawing the appeal was due to the fact that it has caused significant anxiety amongst residents within the vicinity of the appeal site, which the appellants wish to minimise. While the Secretary of State considers this to be commendable and acknowledges that by withdrawing the appeal it prevented the other parties from incurring further unnecessary expense in the appeal process, unfortunately LLRA still incurred expense up to that point in preparing for the arranged Inquiry in accordance with the set timetable. He also takes the view that residents’ concerns were already known much earlier in the appeal process and consequently does not amount to a material change of circumstances to justify the appellants withdrawing the appeal when they did. Therefore, he concludes that the

withdrawal of the appeal amounts to unreasonable behaviour, causing LLRA to incur wasted or unnecessary expense in the appeal process. An award of costs will be made accordingly.

10. As to the extent of the award, the view is taken that the Inspectorate's Start letter of 23 August 2017 gave sufficient warning to the appellants, via their agents, that withdrawal of an appeal without good reason, at any time in the appeal process, could result in an award of costs against them. The appellants were informed on 22 September 2017 that LLRA were granted Rule 6 status in the appeal. Therefore, they would have known from that point that LLRA will have been incurring preparatory costs in accordance with the set timetable. It is therefore considered that an award of costs from 22 September 2017 (inclusive) is justified.

11. It is noted that the LLRA have submitted itemised details of the costs incurred. However, for the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling him to award to a party the costs necessarily and reasonably incurred in relation to the appeal proceedings before him. He does not determine the amount payable. That will be for the parties to resolve by agreement on the evidence of expense actually incurred or failing that, in the context of an application to the Senior Courts Costs Office for detailed assessment.

FORMAL DECISION

12. For these reasons, it is concluded that a partial award of costs against the appellants, on grounds of "unreasonable" behaviour resulting in wasted or unnecessary expense, is justified in the particular circumstances.

COSTS ORDER

13. Accordingly, the Secretary of State for Housing, Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 322 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, HEREBY ORDERS that Veolia ES (UK) Ltd shall pay to Long Leys Residents Association their costs incurred in the appeal process, limited to those costs incurred from 22 September 2017 (inclusive); such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. You are now invited to submit to Ms Joanne Demetrius of Veolia ES (UK) Ltd, details of those costs with a view to reaching agreement on the amount. A copy of this letter has been sent to her.

Yours faithfully



KEN McENTEE
Authorised by the Secretary of State
to sign in that behalf