

Costs Decision

Site visit made on 23 January 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 27 February 2017

Land at South Side of Victoria Square, Portland, Dorset DT5 1AL
Costs application in relation to Appeal Ref: APP/P1235/G/16/3152301

- 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).
 - It is made by Clear Channel UK against Weymouth and Portland Borough Council.
 - The appeal was against the issue of a discontinuance notice (DN) relating to an advertisement site comprising two advertisement hoardings situated on the land at the south side of Victoria Square, Portland, Dorset.
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Decision

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

Reasons

2. 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 another party to incur unnecessary or wasted expense.
3. The full claim for costs is made on the basis that the Council has failed to have regard to the advice on discontinuance notices in PPG. Further, the Council has failed to attempt any negotiation with the appellant as advised throughout these sections of PPG, despite the appellant's active attempts to engage with them. This failure is exacerbated by the Council's failure to withdraw the DN as soon as it was brought to their attention that it was flawed and contrary to PPG guidance.
4. The Council indicates that it stands by the view that the DN is not fundamentally flawed and does not accept that it has behaved unreasonably during the discontinuance action and appeal process. It acknowledges that the Appellant is entitled to make an application for costs.
5. Having considered all of the factors relating to this case I have concluded in my appeal decision that the DN, when read as a whole, was acceptable and not fatally flawed. I do not consider that the Council's wording and specific references to advertisements, rather than to the site itself, should have caused such confusion. In any case, the appellant, via an experienced agent, has been able to appeal the DN and has put forward a comprehensive and competent appeal.
6. I accept that the DN could have been worded more clearly and that, if the wording did cause any misunderstanding, this could be construed as being unreasonable behaviour on the part of the Council. However, in order to be successful a claim for costs must indicate that the unreasonable behaviour led to unnecessary loss and expense. In this case I have found that, when read as a whole, the DN clearly related to the site and the two advertisement hoardings. I do not consider that the Council's actions have resulted in any unnecessary loss and expense for the Appellant,
7. As indicated above, a comprehensive appeal has been made on behalf of the appellant and all of the matters raised have been dealt with in my appeal decision.

Irrespective of the confusion on the part of the appellant, I consider that the DN was sufficiently clear to indicate what comprised the site and why the LPA had issued the notice. I have made it clear in my decision that, when read as a whole, the DN was clear in its intent and reasoning. The arguments relating to any 'confusion' are not, in my view, sufficient to indicate that it resulted in any quantifiable expense over and above that which would have been necessary in the first instance to appeal the DN.

8. In conclusion, therefore, I do not consider that the Council's actions resulted in any unnecessary expense for the appellant in the appeal process relating to the issue of this particular notice. The application for an award of costs, therefore, fails.

Anthony J Wharton

Inspector