
Costs Decisions

Inquiry Held on 17 December 2019

Site visit made on 17 December 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Costs application A in relation to Appeal Ref: APP/H4315/C/18/3212452 The Function Room, 2B North Road, St Helens WA10 2TL

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by St. Helens Metropolitan Borough Council for a full award of costs against Mr Martin John Allen.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the carrying out of operational development on the land comprising (i) the unauthorised erection of numerous telegraph poles to a height in excess of six metres such telegraph poles being situate in the approximate position as shown by the line of blue dots on the attached plan and (ii) the erection of a roller shutter to a height in excess of 2 metres together with telegraph poles situate above the roller shutter the approximate position of the roller shutter being shown by the line of green dots on the attached plan.
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Costs application B in relation to Appeal Ref: APP/H4315/C/18/3212452 The Function Room, 2B North Road, St Helens WA10 2TL

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Martin John Allen for a full award of costs against St. Helens Metropolitan Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the carrying out of operational development on the land comprising (i) the unauthorised erection of numerous telegraph poles to a height in excess of six metres such telegraph poles being situate in the approximate position as shown by the line of blue dots on the attached plan and (ii) the erection of a roller shutter to a height in excess of 2 metres together with telegraph poles situate above the roller shutter the approximate position of the roller shutter being shown by the line of green dots on the attached plan.
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Decisions

1. Application A for an award of costs is allowed in the terms set out below.
2. Application B for an award of costs is refused.

The submission for St Helens Metropolitan Borough Council

3. The costs application was submitted in writing.

The response and submission by Mr Martin John Allen

4. The response and costs application was submitted in writing.

Reasons

5. 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. The aim of the costs process is to encourage all those involved in the appeal process to behave in a reasonable way in terms of timeliness and in the presentation of full and detailed evidence to support their case.

Costs application A

6. The Council submits that the appellant has behaved unreasonably both procedurally and substantively in dealing with his appeal and has therefore caused the Council to incur costs in defending the appeal. Unreasonable behaviour from a procedural perspective can include prolonging the proceedings by introducing a new ground of appeal. I have noted that the original appeal was submitted on ground (g) only which relates to the time period given to comply with the requirements of the notice. The appellant submitted no evidence with respect to this ground of appeal.
7. However, following correspondence with the Planning Inspectorate the appellant decided to pursue the appeal on ground (d) which relates to time immunity with respect to the alleged breach of planning control the subject of the enforcement notice. Rather than clearly arguing the appeal on ground (d), the appellant completely changed the case. Instead, the case made by the appellant appears to me to have been a theoretical argument relating to the nature of the operational development comprising the erection of telegraph poles and the associated roller shutter.
8. I have found that both legally and logically the appellant's case was flawed and was based on a legal argument that has no reasonable prospect of succeeding. At the inquiry it was accepted that the matter the subject of the enforcement notice constitutes a building operation under the definition within s55 of the 1990 Act and there is insufficient evidence or case law which supports the appellant's interpretation for what the relevant operation was. In his oral evidence the appellant very clearly accepted that the telegraph poles form a boundary for a courtyard, that the structure of telegraph poles was intended to be a complete unit and, importantly, he interpreted the alleged breach and requirements of the notice as the Council intended.
9. As explained in the main decision, given his understanding of the enforcement notice, his evidence in support of his appeal on ground (d) would lead to its failure. As such, in this case I consider it unreasonable that the appellant decided to run the appeal which, as a consequence, caused the Council to incur costs in defending its position.
10. Although I have found there to be some correctable errors in the enforcement notice I do not agree that it is flawed to a degree which renders it invalid. I do not see significant errors which have led to the appellant submitting an appeal supported with evidence that has a reasonable prospect of succeeding.

Costs application B

11. The appellant argues that the appeal would not have been necessary, had the Council done their job properly. As explained in my main decision, the enforcement notice enables every person who receives it to know exactly what

constitutes the breach of planning control, and what should be done to remedy the breach. The notice does not require amendments that mean it is fatally defective or a nullity. I agree that it should have been drafted with the utmost care, but the appellant's argument with respect to the errors he sees do not go to the heart of the appeal on ground (d).

12. There is insufficient evidence before me to show that the Council did not carry out adequate prior investigation of the alleged breach of planning control and as such, I consider that their action was entirely justified in this case. Following on from correspondence from the Inspectorate the notice could have been withdrawn and amended, but it was not necessary for the Council to have done so as explained in my main decision on this case.
13. The appellant made the decision to submit a ground (d) appeal following correspondence from the Inspectorate but should have done so only if he considered there was evidence to support that appeal, taking account that it should have had a reasonable prospect of succeeding. The evidence submitted shows that this was not the case.
14. Given the above, I do not consider the Council has acted unreasonably from a procedural point of view.

Conclusions

15. With respect to Costs application A I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.
16. With respect to Costs Application B I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been not demonstrated and that a full award of costs is not justified.

Costs Order

17. With respect to application A, I 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 the Mr Martin John Allen shall pay to St Helens Metropolitan Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The Council is now invited to submit to Mr Martin John Allen, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips

INSPECTOR