



Costs Decision

Inquiry Held on 3 August 2021

by **J Whitfield BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 September 2021

Costs application in relation to:

Appeal A Ref: APP/N4720/C/19/3243181

Appeal B Ref: APP/N4720/C/19/3243342

Land at Leeds Road, Lofthouse, Wakefield WF3 3LR

- 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 Marsh Investments Wakefield Limited (Appeal A) and Searchagain Limited (Appeal B) for a full award of costs against Leeds City Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the land to a mixed use as a café building and land where commercial/industrial uses are taking place and the erection of storage containers, portable cabins, caravans, a canopy structure, outdoor storage and boundary fencing and gates.
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Decision

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

Procedural Matter

2. The costs application was made orally at the Inquiry. It was made following my ruling at the Inquiry that the enforcement notice subject of the appeals was a nullity.

The submissions for Marsh Investments Wakefield Limited and Searchagain Limited

3. The issue of a notice that is a nullity, that is in the words of the *Miller-Mead*¹ judgement, so much waste paper, and has been subject of the appeals, is in itself unreasonable behaviour. Leeds City Council no doubt has internal expertise and experience of drafting enforcement notices and because it is a complex case, it may have been advisable to seek Counsel opinion. Once the Council has committed to a case, it has to be legally robust. Because of the ramifications for the appellants, they are entitled to a full award of costs from the date of the notice itself was issued.

The response by Leeds City Council

4. An LPA plainly is expected to know the law and apply it correctly but that is not immutable as this is a complicated case. Whilst Counsel opinion may be sought it is not usual. The Council has a professional and legal resource which it has relied on but whilst mistakes have been made, this is a case which is

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

complex and difficult. The appeal site has undergone a number of fluid uses, buildings popping up everywhere and raised issues of whether those buildings are lawful. Conceptually the site is also complex with the issue of whether it is a single planning unit or whether there has been multiple planning units being raised. Whilst the Council acknowledge an error has been made, it asks that the Inspector concludes there has not been a dereliction of duty. It has been an honest mistake and mistakes are not in themselves unreasonable. The Council accepts that the appellants' previous LDC submission does not aid the Inspector's consideration on the nullity point but it does suggest that it was reasonable of the LPA to describe the uses on the land in the enforcement notice in the same way the appellant did. In the appellants' statement of case, their professional advisors did not identify any gross error. Mistakes are not unreasonable.

5. In terms of expense, at best only a partial award could be argued on the basis that both parties have a responsibility to the Inquiry to avoid wasted expense and both parties should share the consequences of failing to assist the Inspector ahead of the Inquiry. The earliest the issue of nullity was raised was shortly before the Inquiry and thus the earliest any wasted expense could be justified would be from the appellants' letter to the Council on 23 July 2021. With earlier notification of the nullity issue, the Council probably would have taken the view to withdraw the notice and reissue it.

Reasons

6. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The Guidance includes amongst the examples of behaviour that may give rise to a substantive award of costs against an LPA as, 'acting contrary to, or not following, well-established case law'.
7. At the Inquiry the Council accepted the relevant authorities in respect of the matter of nullity put forward in submissions by the appellant, namely *Miller-Mead, Payne and Oates*. I note that the legal and professional resources of the Council went into the drafting of the notice. I also note that the appeal site and the use of the site give rise to complex issues. However, the fact that issues relating to the site are complex means to the onus was on the Council to ensure the notice was drafted in accordance with well-established case law. It is not clear to what extent consideration of that case law was taken into account in drafting the notice. Ultimately, however, the notice is drafted in a manner which is contrary to well-established case law.
8. Given that the Council accepted at the Inquiry that had it have had notice of the nullity issue earlier it would have withdrawn the enforcement notice, it seems to me a tacit acceptance on the Council's part that the notice as drafted fails to account for the relevant case law. The point in the process at which the matter was brought to the Council's attention is therefore a moot point. After all, the onus is on the Council at the outset to ensure any notice it drafts accords with the relevant legislative authorities. As a result, the Council has therefore behaved unreasonably in issuing the notice in its issued form. The fact that the point was not raised until just prior to the Inquiry is in itself irrelevant, since the appellants have been put to wasted expense from the outset in having to appeal a notice which is a nullity.

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Leeds City Council shall pay to Marsh Investments Wakefield Limited and Searchagain Limited, 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.
11. The applicants are now invited to submit to Leeds City 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.

J Whitfield

INSPECTOR