



Costs Decision

Inquiry held on 19-22 October 2021 and 25-27 October 2021

Site Visit made on 19 October 2021

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Costs application in relation to:

Appeal A Ref: APP/W4325/C/19/3237307

Appeal B Ref: APP/W4325/C/20/3266061

Appeal C Ref: APP/W4325/W/19/3235840

Land at Thornton Manor, Manor Road, Thornton Hough, Wirral CH63 1JB

- 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 Thornton Hall Hotel Limited for a partial award of costs against Thornton Holdings Limited.
 - The inquiry was in connection with appeals against:
 - Appeal A: An enforcement notice alleging unauthorised operational development comprising the erection of marquees at the Dell and Walled Garden and the erection of an area of timber decking to the front (south west) of the Lakeside marquee within the curtilage of a Listed Building (known as Thornton Manor) as outlined in red on the attached plan.
 - Appeal B: An enforcement notice alleging unauthorised operational development comprising the erection of a marquee at the lakeside within the curtilage of a Listed Building (known as Thornton Manor).
 - Appeal C: The refusal of planning permission for the erection of three marquees within the Thornton Manor Estate at The Dell, The Walled Garden and at the Lake to be used for private functions and conferences.
-

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.

The submissions for Thornton Hall Hotel Limited

3. The Planning Practice Guidance (the Guidance) specifically identifies unreasonable conduct on the part of an appellant as the late withdrawal of an appeal and that this may be a reason for a procedural award for a Rule 6 party. The same must be true of a withdrawal of a ground of appeal. This occurred on day three of the Inquiry after the Rule 6 party had submitted a statement of case responding to the appellant's skeleton arguments on the ground (d) appeals. Those legal points were repeated in opening submissions. It has plainly incurred costs in dealing with the appeals on ground (d) not least in the preparation of evidence dealing with the history along with legal submissions. The ground (d) appeals were withdrawn without good reason. The arguments

why the appeals on ground (d) were misconceived is set out in the Rule 6 party's case and have not been refuted.

The response by Thornton Holdings Limited

4. The appellant must deal with the notice as served, including section 7 of the notice in respect of Appeal A which provides informative notes. That note states that the enforcement notice issued on 11 July 2007 and upheld on appeal on 24 November 2008 is to be considered. It goes on to state that the notice is extant given that the planning permission pursuant to the application subject of Appeal C has been quashed. The Council's point in issuing the notice in respect of Appeal A is that the planning permission was quashed and of no effect for enforcement purposes.
5. On the basis of the notice served, the appellant was entitled to appeal on ground (d) because the Council's position was that the development relied on a planning permission and it would not have been able to stop the clock for immunity purposes. The appellant does not say the Council's position was right or wrong, but if that was the Council's information attached to the notice, as it conveyed, it had clear implications for the timing of the Dell and Walled Garden marquees.
6. The Council then issued a second notice in respect of the lakeside (Appeal B) more than a year later in December 2020. In doing so the appellant says the Council had noticed what it had said in the informative note in the first notice (Appeal A) and realised it was inconsistent with the argument that the Council was still able to take enforcement action against the Dell and Walled Garden marquees. The Council's initial intention to rely on the 2007 notice for the Lakeside marquee suggests that the Council did not regard the planning permission as effective for the purposes of section 180(1) of the 1990 Act until it appreciated the consequences of taking that position for the Dell and Walled Garden marquees (i.e. taking that position means the Dell and Walled Garden would have been immune from enforcement action).
7. The threads were drawn together by the appellant when the Council opened their case at the Inquiry. It indicated that the likelihood that the proper position was that the effect of the planning permission as long as it existed, discharged the 2007 lakeside enforcement notice. That having been set out, the appellant withdrew the ground (d) appeals. As such unreasonable behaviour has not occurred.
8. In respect of the Rule 6 party, it is not responsible for the issue of the enforcement notices. The Rule 6 party has chosen to involve itself in the appeals process. Therefore, the appellant's behaviour has not been unreasonable in respect of the Rule 6 party as the withdrawal of the ground (d) appeals arises out of the approach taken by the Council.
9. Even if the appellant has behaved unreasonably, then that unreasonable behaviour could not have occurred until the point at which the Council served its statement of case in respect of Appeal B and can only arise as an issue for the Council at the point at which evidence was exchanged.

Reasons

10. 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.
11. Thornton Hall Hotel Limited was a Rule 6 party at the Inquiry. At 16:15 on the third day of the Inquiry (21 October 2021), the appellant orally withdrew Appeal A on ground (d) and Appeal B on ground (d). The appellant's position is that it was only upon the opening submissions of the Council at the Inquiry did the appellant appreciate the Council's case in respect of the appeals on ground (d).
12. I note that the Rule 6 party has chosen itself to involve itself in what is essentially a dispute between the Council and appellant. However, this was not a substantive matter relating to the merits of the appeal. The Guidance is clear that an award may be made in favour of an interested party on procedural grounds, where, for example, an appeal has been withdrawn without good reason.
13. I note that the notice in respect of Appeal A contained an informative note which said that the 2007 Lakeside enforcement notice was extant as the 2011 planning permission had been quashed, thus it had not been superseded by a permission under section 180(1) of the 1990 Act and remains effective.
14. I also note that it appears the Council realised that taking the same stance that the permission was not effective in respect of the Dell and Walled Garden marquees means they would be immune from enforcement action when the notice in respect of Appeal A was issued. Thus, the notice in respect of Appeal B relating to the Lakeside marquee was issued.
15. However, notwithstanding the fact that the appellant may or may not have been misled by the informative note of the notice in respect of Appeal A, the notice is clear on its face that the Council believed the alleged breach of planning control occurred within the last four years. It says as much in section 4 of the notice. Moreover, it seems somewhat illogical to suggest that the Council would have served a notice if its position was that the alleged breach subject of the notice was immune from enforcement action. Thus, it could be followed from the face of the notice that the Council's was not relying on the planning permission having no effect.
16. Furthermore, a significant amount of the appellant's case on ground (d) was not based on the proposition of the effect of the now quashed planning permission. In the appellant's statement of case for Appeal A, it's skeleton argument on ground (d) is that the Dell and Walled Garden marquees as built are materially different from those authorised by the planning permission and thus the matter of the permission was irrelevant. In addition, the proof of evidence in September 2021 of Mr Landor on behalf of the appellant continues to pursue this as the appellant's main argument on the appeal on ground (d). Indeed, in opening at the Inquiry, the appellant maintained that, regardless of the position in respect of the quashed planning permission and its effect on immunity periods, the marquees were different from those erected in a number of respects. Nothing in the Council's position on that point had changed at any time since the issue of the notice in respect of Appeal A.

17. Moreover, the appellant's initial submissions in respect of Appeal B on ground (d) were that the lakeside marquee had been erected more than four years prior to the issue of the notice, despite there being an enforcement notice in force. Again, a different point than that raised as the reasons for the withdrawal of the appeals.
18. As a result, it seems to me that any clarification the appellant may have gleaned from the Council's confirmation in opening of its position on that point would have had little bearing on the appellant's position in respect of the ground (d) appeals. Thus, it was unreasonable of the appellant to withdraw the appeals on ground (d) at the point at which it did given the circumstances had not changed.
19. Moreover, the Rule 6 party has incurred wasted expense from that unreasonable behaviour by resisting the ground (d) appeals through its initial statements of case, the proof of evidence prepared by Mr Gilbert on its behalf, the submissions of counsel on ground (d) in opening the case and the attendance of Mr Gilbert at the Inquiry to give evidence on the matter,
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified solely in respect of those costs incurred by the Rule 6 party in respect of Appeal A on ground (d) and Appeal B on ground (d).

Costs Order

21. 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 Thornton Holdings Limited shall pay to Thornton Hall Hotel Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in Appeal A on ground (d) and Appeal B on ground (d), such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Thornton Holdings Limited, 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