The Planning Inspectorate

Costs Decision

Site visit made on 11 May 2022

by Timothy C King BA(Hons) MRTPI

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

Decision date: 17 August 2022

Costs application in relation to Appeal Ref: APP/A1530/G/21/3274955 Land adjacent to Waldegraves Lane (at junction with Chapmans Lane and East Road), West Mersea, Colchester CO5 8SE

- The application is made under the Town and Country Planning Act 1990, sections 220 and 322, Schedule 6, and the Local Government Act 1972, section 250(5) and the Town and Country (Control of Advertisements) (England) Regulations 2007.
- The application is made by Mr David Lord for a full award of costs against Colchester Borough Council
- The appeal was against the Council's decision to issue a discontinuance notice concerning the display of an advertisement at the above site.

Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) 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 also indicates that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate its actions.

3. The basis of this costs application is that the Council failed to properly engage with the applicant and provide detailed information to show that a proper assessment of the advertisement sign had been undertaken prior to the discontinuance notice's service.

4. In my main decision letter I have already outlined that the Council wavered, apparent from its vague and inconsistent comments in correspondence between 24 September 2020 and 19 March 2021, on whether the said signage actually benefitted from deemed consent. Only those advertisements which are afforded deemed consent can be subject to discontinuance action.

5. In this regard the applicant has provided a chronological account as to communication. The Council has not disputed its contents and, in the circumstances, I have no reason to disbelieve the account. Especially highlighted is an e-mail of 16 November 2020 from the case officer where, in response to a request from the applicant's agent as to confirmation that deemed consent applied, he stated *"This proposed new sign is ok."*

6. The value of any correspondence with wording such as this received from a public authority, in terms of the standard of advice expected, is woefully

inadequate. Given the clear absence of any detailed analysis and reasoned judgement the recipient is given little, if any, assurance.

7. Moreover, in this particular instance, the confusion is further compounded by an e-mail dated 5 March 2021 whereby the officer then changes his mind stating *"… I now realise that the replacement advertisement does not benefit from deemed consent…"*.

8. Given that this was the second time the officer had changed his mind on this point, which goes to the heart of the matter at issue, I can understand the applicant's grievance and, further, the final e-mail of 19 March 2020, whereby the officer then states *"the sign can remain pending the service of a Discontinuance Notice",* still fails to throw light on the matter.

9. In the event the Council proceeded with discontinuance action and the applicant understandably felt he had to appeal the decision.

10. In fairness, had the Council come to a definite conclusion otherwise then, given its concern as to the harm the sign was causing, it would have likely proceeded with the normal legal route for the display of unauthorised advertisements to secure removal. That said, the applicant, in an attempt to obviate this, could have exercised his right to make an application for express consent. Also, if the Council refused such an application – as would seem likely in the circumstances – then an appeal would probably still have ensued. However, this is all conjecture and my remit here is only to examine the merits of the applicant's claim.

11. Turning to the Council's response I note the following wording:

    "The Council's decision as to whether the sign benefitted from deemed consent has no bearing on the decision mad (sic) subsequently to seek discontinuance."

12. I firmly disagree as, if the sign did not benefit from deemed consent – and no convincing analysis has been produced either way – then no discontinuance action could have been lawfully taken. This is the crux of the matter. Accordingly, no appeal against the service of a discontinuance notice would then have resulted, and the applicant would not have incurred the expense it did.

13. Irrespective, therefore, of my findings as to the degree of harm being caused by the signage, I find the Council's procedural approach to this case was less than acceptable. It did not produce proper evidence to substantiate its actions.

14. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 Colchester Borough Council shall pay to Mr David Lord 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.

16. The applicant is now invited to submit to Colchester Borough 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.

Timothy C King

INSPECTOR