

Costs Decision

Inquiry Held on 23 August 2022

Site visit made on 24 August 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Costs application in relation to Appeal Ref: APP/D2320/C/21/3279304 Chisnall House Farm, Croston Lane, Charnock Richard, Chorley PR7 5HJ

- 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 Chorley Borough Council for a partial award of costs against Mr Andrew Walsh.
 - The Inquiry was in connection with an appeal against an enforcement notice alleging unauthorised material change of use of land and associated unauthorised operational development and storage to facilitate that unauthorised material change of use to a permanent Racetrack and Recreational Motorcycle Track.
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Decision

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

The submissions for Chorley Borough Council

2. The submission by Chorley Borough Council was made in writing during the Inquiry. The main thrust of the Council's case is that there is unaddressed landscape and amenity harm and a lack of benefits advanced and, as a consequence, the ground (a) appeal had no reasonable prospect of succeeding.

The response by Mr Andrew Walsh

3. Although the appellant was given the opportunity to respond to the Council's costs application during the Inquiry, the appellant confirmed they will not resist the application.

Reasons

4. The Planning Practice Guidance (PPG) 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 term 'unreasonable' is used in its ordinary meaning as established by the Courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774. Awards against a party may be either procedural or substantive.
5. The PPG sets out the type of behaviour that may give rise to a substantive award against an appellant and advises that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding. This may occur when the development is not clearly in accordance

- with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
6. A ground (a) appeal is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. The appellant also appealed under grounds (c), (d) and (f). The ground (a) appeal falls to be considered if the ground (c) and (d) appeals have failed and planning permission is required for the matters stated in the breach.
 7. The appellant's appeal under ground (a) was confusing, conflating grounds (c) and (d) and failed to grasp the fundamentals of the Council's reasons for taking enforcement action. The appellant's professional representation changed prior to the Inquiry. Nevertheless, the appellant's new agent, Mr Sumner, decided to rely on documents already submitted and did not revise the appellant's case.
 8. Although the appellant set out their position with respect to whether planning permission should be granted in the Statement of Common Ground, their contentions were largely unsupported by evidence either in their Statement of Case or Inquiry proofs. The appellant failed to grapple with the issue of openness, until Mr Sumner was prompted to do so during cross-examination and offered no very special circumstances that would be relevant.
 9. While the appellant contended that the imposition of restrictive conditions will reduce any landscape harm or harm to the living conditions of residents to an acceptable level, Mr Sumner accepted under cross examination that there is no evidence before the Inquiry as to what such mitigation would comprise. Significantly, Mr Sumner accepted that the appeal scheme is contrary to policy, that planning permission should never be granted for the development on the basis of the evidence before the Inquiry and the ground (a) should be dismissed.
 10. Following Mr Sumner's concession that the appeal under ground (a) should be dismissed, the appellant withdrew the appeal under ground (a). Although it has therefore not been necessary for me to make a determination on the ground (a) appeal, by Mr Sumner's own admission, the appeal under ground (a) had no reasonable prospect of success. This is unreasonable behaviour.
 11. While the appellant withdrew the ground (a) appeal during the Inquiry, the Council has incurred unnecessary and wasted expense in responding to the ground (a) appeal. In particular, in drafting the relevant sections of the Council's Statement of Case, Statement of Common Ground, Mr Crossland's Proof of Evidence, in addressing the ground (a) appeal during the Inquiry and in making the costs application.
 12. Thus, for the reasons given above, I conclude that unreasonable behaviour by Mr Andrew Walsh, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified, limited to those costs incurred in dealing with the ground (a) appeal and in making the costs application.

Costs Order

13. 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 Mr Andrew Walsh shall pay to Chorley Borough Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in countering the appellant's submissions on ground (a) and in making the costs application; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Mr Andrew Walsh, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Savage

INSPECTOR