



Costs Decision

Hearing 15 February 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 3 March 2023

Costs application in relation to Appeal Ref: APP/Q2371/F/22/3296097 Punch Bowl Inn, Longridge Road, Hurst Green BB7 9QW

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ribble Valley Borough Council for a full award of costs against Mr Andrew Donelan of Donelan Trading Limited.
 - The appeal was against a Listed Building Enforcement Notice alleging the demolition of the building.
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Decision

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

Reasons

2. 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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Examples of unreasonable behaviour are given in the PPG and may concern non-compliance with procedural requirements.
3. The appeal was originally made on grounds (d), (g) and (j) and, as such, the Council was required to respond in full to all grounds. Following my request on 8 November 2022 seeking clarification of the grounds of appeal the appellant failed to respond to the issues raised with respect to the appeal on ground (j). Furthermore, a few days later new evidence was received from the appellant with respect to his appeal on ground (d). That additional evidence caused the original Hearing due to be held on 16 November 2022 to be postponed in order to give the Council an opportunity to engage with Counsel and their expert witness.
4. My request for clarification of other matters and for matters such as the Statement of Common Ground to be submitted were apparently ignored by the appellant. As a consequence, the Council had to proceed on the basis that all the original grounds were being pursued in the light of the full body of written evidence submitted. It should also be noted here that the request for

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

clarification on the lack of evidence to support grounds (g) and (j) were also ignored, and there was no clarification on the appellant's position with respect to withdrawing the appeal on ground (j) for reasons explained by myself.

5. Additional evidence submitted to the Council on 11 November 2022 was also submitted to the Inspectorate, but the Council subsequently requested that such evidence be disregarded as it had previously been tabled by the appellant at a 'without prejudice' meeting.
6. On 6 December 2022 the criminal trial relating to the demolition of the Punch Bowl Inn was concluded and guilty verdicts were returned for the defendants. Therefore, following that conclusion the Council contacted the appellant seeking clarification as to whether, in the light of the Magistrate's Court verdict, he would continue to pursue the appeal on ground (d). The Planning Inspectorate was also contacted explaining the latest situation, setting out the legal principle of res judicata and making it clear that an application for an award of costs would be made if the appellant did not withdraw the ground (d) appeal by 1 January 2023.
7. The appellant's intention to withdraw the appeal on ground (d) was not, in fact communicated directly to the Planning Inspectorate until the Hearing had started. Consequently, although the Council had been informed of his intentions, they quite rightly continued to prepare for the Hearing in case the appellant decided to continue pursuing all of his original grounds – grounds (d), (g) and (j). On 3 February 2023 the appellant also indicated to the Council that he may also introduce evidence and arguments pursuant to ground (h). As a result of this the Council also had to prepare in anticipation of an additional ground being raised, including engagement with a heritage expert.
8. Therefore, at the start of the Hearing on 15 February 2023 both the Council and I were in an extraordinary situation where we did not actually know which grounds of appeal the appellant would be pursuing. This is a most unsatisfactory state of affairs and is a direct and consequential result of the appellant's lack of engagement and cooperation during the whole appeal process.
9. At the Hearing event itself, the appellant confirmed his withdrawal of the appeal on grounds (d) and (j) and it was also confirmed that, following correspondence from the Inspectorate, he would not be pursuing an appeal on ground (h). Therefore, the only ground of appeal to be pleaded was ground (d). This could quite easily have been dealt with using written representation procedures. The evidence used to support the remaining ground and the arguments regarding the lack of clarity of the Notice were only introduced at the Hearing itself. With respect to the appeal on ground (g) the appellant's evidence is sparse and has been derived from existing written evidence that was apparently submitted in support of his appeal on ground (d).
10. Overall, the appellant's disregard for following the correct appeal Hearing procedures, lack of cooperation with the Council and the Inspector demonstrate unreasonable behaviour from a procedural perspective. I have taken account of the appellant's representations with respect to the process, including the duplication of evidence between the criminal and enforcement cases, but that does not account for the behaviour demonstrated. I have also noted his comments that the Council has self-generated work that was not needed. However, with greater engagement with the process the Council's work in

chasing evidence and confirming important matters would not have been necessary.

Conclusions

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified in the terms set out below.

Costs Order

12. 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 Donelan of Donelan Trading Limited shall pay to Ribble Valley 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.
13. The applicant is now invited to submit to the person awarded against, 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