Costs Decision

Site visit made on 30 August 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2024

Costs application in relation to Appeal Ref: APP/B2355/C/24/3340105
Site known as Former Albert Mill, Albert Street, Whitworth, Rossendale OL12 8PJ

Application A

- 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 Spenside Developments Limited for a full award of costs against Rossendale Borough Council.
- The appeal was against an enforcement notice alleging without the benefit of planning permission, operational development has taken place on the Land comprising earthworks; the importation of construction materials and plant machinery; the formation of a new access ramp; the crushing of old construction materials; site clearance and the excavation of the Land.

Application B

- 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 Rossendale Borough Council for a full award of costs against Spenside Developments Limited.
- The appeal was against an enforcement notice alleging without the benefit of planning permission, operational development has taken place on the Land comprising earthworks; the importation of construction materials and plant machinery; the formation of a new access ramp; the crushing of old construction materials; site clearance and the excavation of the Land.

Decision

1. Application A for an award of costs is allowed in the terms set out below.

2. Application B for an award of costs is partially allowed in the terms set out below.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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.

4. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice. Unreasonable behaviour can relate to procedural matters or substantive issues relating to the merits of the appeal.

Application A

5. The appellant argues that the Council has issued a flawed enforcement notice which cannot be amended. The PPG states that Councils must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

6. As detailed in my appeal decision the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and what is required to remedy the breach. This led me to quashing the notice. More diligent investigation from the Council would have ensured that the notice was accurate. The Council have therefore acted unreasonably in this regard.

7. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Application B

8. The Council argue that the appellant has behaved unreasonably on procedural and substantive matters. These matters relate to appeal on grounds (a), (b) and (c) that were not proceeded and also that the submissions on nullity and invalidity were vague and imprecise.

9. It was confirmed at an early stage in the appeal process that the appeals on ground (a) and (b) were not proceeding. There is minimal evidence submitted with regards to these matters since these grounds were withdrawn early, therefore I do not consider that the Council have incurred wasted expense as a result.

10. As can be seen in my appeal decision, I have found that the enforcement notice was a nullity and therefore the notice has been quashed. The appellant's submissions on this matter were not vague or imprecise and they have not acted unreasonably in this regard.

11. The PPG states that if an appeal is withdrawn without any material change in the Council's case, or any other material change in circumstances relevant to the issues arising on the appeal, an award of costs may be made against the appellant if the Council can clearly show that they have incurred wasted expense. I consider the withdrawn appeal on ground (c) to be relevant in this case.

12. The appellant withdrew the appeal under ground (c) on 13 June 2024 and minimal reasoning was given for this withdrawal, with no indication that there had been a change in the Council's case or in other circumstances. The Council's statement of case clearly shows that work had been undertaken on mounting a defence against the appeal on ground (c) and therefore in this specific matter, the Council has incurred wasted expense as a result of the appeal on ground (c) being withdrawn without good reason.

13. The Council consider there was wasted expense, from the withdrawal of ground (c), in relation to the preparation of evidence and incurred costs relating to the change of procedure from Inquiry to Written Representations. Proofs of Evidence (PoE), as detailed in the Post Case Management Conference Note,

were required by 18 June 2024. The Council's submitted PoE notes the withdrawal of ground (c) and there is no specific evidence detailing that the Council have incurred wasted expense through the preparation of evidence following the withdrawal of ground (c). Both the Council and the appellant provided correspondence, following the withdrawal of ground (c), maintaining the position that an Inquiry was considered the appropriate procedure. It was the Planning Inspectorate that changed the appeal procedure and therefore I do not consider the appellant has acted unreasonable in this specific regard.

14. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of works undertaken by the Council with regards to the appeal on ground (c) prior to it being withdrawn and a partial award of costs is therefore warranted.

Costs Order – Application A

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 Rossendale Borough Council shall pay to Spenside Developments 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.

16. The applicant is now invited to submit to Rossendale 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.

Costs Order – Application B

17. 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 Spenside Developments Limited shall pay to Rossendale Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in works undertaken with regards to the appeal on ground (c) prior to it being withdrawn; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to Spenside Developments 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.

Chris Baxter

INSPECTOR