Planning Inspectorate

Costs Decision

Site visit made on 22 May 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 MAY 2025

Costs application in relation to Appeal Ref: APP/F2360/C/23/3329753

- 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 South Ribble Borough Council for a full award of costs against Ventbrook Limited.
- The appeal was against an enforcement notice alleging without planning permission the unauthorised material change of use of land to land used as a compound in connection with a traffic management company for use as storage, offices and parking, including the erection of portacabins and palisade fencing to facilitate the unauthorised material change of use, and, (ii) without planning permission unauthorised operational development consisting of the erection of a storage building (marked B7 on the layout plan at Appendix 1), and additional portacabin forming the second storey of an existing portacabin (marked B8 on the layout plan at Appendix 1).

Land to the rear of Duxburys Garden Centre 92 Chain House Lane, Whitestake, Preston, PR4 4LB

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process, or substantive which relates to the planning merits of the appeal.

3. The Council has applied for a full award of costs against the appellant and has provided reasoning in association with each of the appellant's grounds of appeal which I address in turn as below.

Ground (b) appeal

4. The Council states that the appellant's ground (b) appeal is essentially a ground (c) appeal. I agree with the Council. The appellant does not dispute that a traffic management compound use has occurred on the land and does not make the claim that the associated development or items on the land relate to a different use of the land. There does not appear to be a dispute between the parties that a traffic management depot use has occurred on the land and, in this regard, I find that the appellant unreasonably pursued the ground (b) appeal and without the potential for success and leading to the Council incurring unnecessary and wasted expense in the appeal process.

Ground (c) appeal

5. The Council contends that the appellant has not reasonably substantiated the claim made on ground (c) of section 174(2) of the Act that the matters alleged did not constitute a breach of planning control. The evidence is that the Council gave the appellant reasons why the development did not fall within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). The appellant is professionally represented and despite the clear reference to '*principally to visiting members of the public',* and the limitation imposed in respect of Class E(g)(i),(ii) and(iii), I find that the appellant unreasonably pleaded ground (c) of section 174(2) of the Act.

6. The onus was on the appellant to make a case on this legal ground of appeal. The appellant did not precisely and unambiguously provide sufficient evidence to counter the reasoning submitted by the Council. Moreover, I consider that the appellant did not properly consider case law in respect of facilitating development on the Land.

7. I conclude that the appellant unreasonably pursued the ground (c) appeal, without the potential for success, and leading to the Council incurring unnecessary and wasted expense in the appeal process.

Ground (d) appeal

8. As per my reasoning in the enforcement appeal decision, the appellant did not provide reasonable evidence to make the claim that the sui generis traffic management depot use was immune from enforcement action owing to the passage of time. Given my conclusion in respect of the ground (c) appeal, the ground (d) appeal was not necessary and was unreasonably pursued. In this regard, I do not find that the ground (d) appeal ever had a realistic prospect of success.

9. Given the appellant's confirmation that the company took possession of the land in March 2018, and in the context of no other traffic management depot use on the Land before this time, it could not have been demonstrated, on the balance of probability, that the sui generis use had continued for ten years and hence was immune from enforcement action.

10. I conclude that the appellant unreasonably pursued the ground (d) appeal, without the potential for success, and leading to the Council incurring unnecessary and wasted expense in the appeal process.

Ground (a) appeal

11. The Council states that the ground (a) appeal and deemed planning application was unreasonably pursued and not substantiated in the context of the fact that a section 78 appeal for essentially the same development was dismissed on Green Belt and character and appearance grounds in 2023.

12. In respect of the appellant's statement of case and final comments, the appellant's evidence fails to demonstrate a material change of circumstances relating to the unauthorised development and relative to the overall conclusions reached by the section 78 appeal Inspector. The PPG states that a risk of an award of costs may occur when *'the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the*

Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period'.

13. On the evidence that is before me, I find that when the ground (a) appeal was lodged, it was unreasonably pursued and without any evidence of a material change of circumstances since the 2023 appeal decision was made. Hence, the appellant's actions incurred unnecessary and wasted Council expense in the appeal process up to this point.

14. Notwithstanding the above, the National Planning Policy Framework was revised in December 2024 (the Framework). In particular, Green Belt policy has changed. I afforded the main parties the opportunity to comment on the revised Framework as part of this appeal. The Council's costs application does not relate to the representations made, at my request, in respect of the 2024 Framework. It was open to the Council, should it have considered that it was justified in doing so, to have updated its costs application in this regard. No such update was received. In this regard, I conclude that an award of costs is not justified in respect of the ground (a) appeal in so far that it relates to matters that post-date final comments stage.

15. I conclude that up to and including final comments stage, the appellant unreasonably pursued the ground (a) appeal. This resulted in the Council incurring unnecessary and wasted expense in the appeal process.

Ground (f) appeal

16. As per my reasoning in the enforcement notice decision, the purpose of the notice is to remedy the breach of planning control. Save for my conclusion that part of requirement 5(vii) is not necessary, and hence that it is an excessive requirement, the appellant did not provide any supporting information relating to what lesser steps could be taken in respect of the sui generis traffic management depot use, or indeed the associated facilitating development/items.

17. Save for requirement 5(vii), I conclude that the appellant unreasonably pursued the ground (f) appeal, without the potential for success, and leading to the Council partially incurring unnecessary and wasted expense in the appeal process.

Ground (g) appeal

18. As per my reasoning in the enforcement notice decision, the appellant did not provide credible or objective supporting information to justify why a compliance period of six months was too short. The comment made that '*the Council would have to revoke the planning permission on the whole site and that cannot be done via an enforcement notice if that is the Council's intention'* is not a ground (g) appeal matter. Moreover, and, given my finding that a material change of use of the land to a sui generis traffic management compound use has occurred, such a comment is without merit.

19. I conclude that the appellant unreasonably pursued the ground (g) appeal, without the potential for success, and leading to the Council incurring unnecessary and wasted expense in the appeal process.

Conclusion

20. For the reasons given above, I conclude that Ventbrook Limited has displayed unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. Consequently, a partial award of costs is therefore warranted.

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 Ventbrook Limited shall pay to South Ribble Borough Council the partial costs of the appeal proceedings described in the heading of this decision and limited to all matters relating to the grounds of appeal save for representations made which post-date final comments stage (i.e., the ground (a) appeal and the revised 2024 Framework) and representations made in respect of the variation of requirement 5(vii) of the notice as part of the appeal made on ground (f); such costs to be assessed in the Senior Courts Costs Centre if not agreed.

22. The applicant is now invited to submit to Ventbrook 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.

D Hartley

INSPECTOR