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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2019] EWHC 3819 (Admin)

Nos. CO/813/2019

CO/1488/2019

CO/1648/2019

CO/989/2019

Royal Courts of Justice
Monday, 16 December 2019

Before:

MR JUSTICE WAKSMAN

B E T W E E N :

CITY & COUNTRY BRAMSHILL LIMITED

Claimant/Appellant

- and -

SECRETARY OF STATE FOR HOUSING, COMMUNITIES

AND LOCAL GOVERNMENT

First Defendant/Respondent

- and -

HART DISTRICT COUNCIL

Second Defendant/Respondent

- and -

HISTORIC ENGLAND

Third Defendant/

First Interested Party

- and -

THE NATIONAL TRUST FOR PLACES OF HISTORIC INTEREST

OR NATURAL BEAUTY

Second Interested Party

MR J STRACHAN QC (instructed by Pinsent Masons LLP) appeared on behalf of the
Claimant/Appellant.

MR A MILLS (instructed by the Government Legal Department) appeared on behalf of the First
Defendant/Respondent.

MR R GROUND QC and MR B DU FEU (instructed by Historic England Legal Department)
appeared on behalf of the Third Defendant/First Interested Party

RULINGS

MR JUSTICE WAKSMAN:

Ruling 1

- 1 So far as this aspect is concerned, the way that the Inspector determined Appeals 4 to 6 and the question of their isolation seems to me to be wholly distinct from whether there might be, as there was before her, permission for 18 (rising to 35 or where on the matter to be remitted to her possibly 51) dwellings. Her logic related to dealing with existing buildings that had a use in the past.
- 2 I have, in addition, said in my judgment that where those buildings are going to be demolished in any event, it is very difficult to see how they could constitute a settlement. On that basis, there is no prospect at all, in my judgment, for the Secretary of State finding that there was a basis then for reconsidering Appeals 4 to 6 as well as the remitted matters under Appeals 8-14 and 16.
- 3 As to whether the demolition point, if I can put it in that way, is correct, that is a matter which will have to be dealt with under the question of permission to appeal.
- 4 So I am going to simply take the more limited course, which is to remit the enforcement notices so far as Appeals 8 to 14 and 16 are concerned to the Inspector, and then quash the inspector's decision on Appeal 7 alone so that that is the sole matter that will be redetermined.

Ruling 2

- 5 The second matter I have to deal with is now the appeal against the costs decision of the inspector which has been held over pending my judgment on the substantive issues. Of course, when the matter was before the inspector, the claimant had failed on all grounds. The position now is that Appeal 7 has to be redetermined and I have to accept the possibility that this time around it might succeed. But the jurisdiction on the part of the inspector to make costs orders is not simply based on an overall discretion where you start with costs following the event; instead, as she recited in paragraph 5 and 6 of her decision, it can only arise where a party has behaved unreasonably and another party has had to incur unnecessary or wasted expense in the appeal process.
- 6 While the Claimant's costs submissions do make clear that they wish to rely on all the grounds of substance, the fact is that when one looks at the particular arguments that have been raised in relation to unreasonable conduct, they do not emphasise the point that I have found for the claimant on. But in any event, it seems to me that the Inspector has considered fully the question of unreasonableness, and I do not see any prospect at all of the Inspector changing her mind so far as the question of prior unreasonableness on the part of the council is concerned.
- 7 On that basis, I am not going to allow any appeal in relation to this costs decision. Of course, if the Inspector now has to redetermine ground 7, there will be further costs arising, and therefore, in relation to any further redetermination, if it turns out in respect thereof the council now has behaved unreasonably, then that is something which the claimant can raise at the end of that redetermination. I am simply dealing with the position of the costs as it was before the Inspector.

Ruling 3

- 8 It seems to me that this is an appropriate case for an issue-based costs order. My normal inclination is to try to avoid doing that and to making the appropriate percentage awards, but I do not feel confident that I have got enough of the figures here in order to do that.

9 So what I am going to do is to award to the Claimant its costs of the section 289 enforcement notice appeals. It is correct that they have not succeeded on every ground, but those matters do now have to be remitted because of my finding on Ground 4 of the applications and appeals before me.

10 So far as the section 288 application is concerned, insofar as that relates to the Appeal 7 matters, then a similar course should be adopted even though they did not succeed on all of the grounds that they alleged in relation to appeal 7. However, the Secretary of State is incontestably entitled to all of its costs in relation to Appeals 4 to 6. I think it is worth just stating for the record, although it is pretty obvious from my judgment, that on the particular point on which the Claimant won it was about one page out of some 29 pages in relation to other grounds of appeal, and by far the lion's share on my analysis, at least looking at my judgment, was in fact on Appeals 4, 5 and 6, but I say no more about it than that.

Ruling 4

11 I am asked to make an order for costs in favour of an additional party other than the Secretary of State. The case of *Bolton* makes it clear that in general a second award of costs will not arise, although if it does it will almost certainly always be at first instance rather than beyond.

12 In his judgment in the House of Lords, with which the other judges agreed, Lord Lloyd said that the following propositions might be supported: the Secretary of State will normally be entitled to the whole of the costs; the developer, who was the interested party there seeking costs, will not normally be entitled to costs unless he can show it was likely to be a separate issue on which he was entitled to be heard, that is to say an issue not covered by counsel for the Secretary of State, or unless he has an interest which requires separate representation. The mere fact that he is the developer will not justify a second set of costs. Then there are questions about appeal.

13 In this case, Mr Ground QC puts forward really two points. First of all, he says that Historic England was at risk because the Claimant was seeking to reverse a decision of the inspector which declined to make an order against Historic England which had been sought by the claimant before the Inspector first time round. On one view, of course, there is a financial interest, but on the other hand, and consistent with the view that HDC took here, the council, the fact of the matter is that at the end of the day it is a decision of the Secretary of State, and as it turns out, it was not necessary for me to redetermine that matter because there was no relevant basis on which the claimant succeeded to interfere with that costs award. So I cannot really take account of that.

14 The second is that there is something of value, significant value, which has been brought into play here by Historic England. In that regard, I think it is important to recognise this was a case all about what should happen in relation to heritage assets. I also think it is important to recognise that in fact the inspector herself recognised that Historic England were providing heritage evidence which was reasonable and assisted in reducing inquiry time. That, of course, is what happened before the inspector, not what happened before me, but I think it gives an indication that there was a very significant role played by Historic England that there was a significant extent to which the evidence on the question of changing benefits was provided by Historic England, and also the evidence it provided on the whole question of witnesses and concessions and so on and so forth that were of some significance as is reflected in my judgment.

15 But that does not entitle Historic England to anything like a full award of costs. In my judgment, they have done sufficient here to entitle them to 25 per cent of their costs, and that is what I award.

Ruling 5

- 16 My view is that *Braintree* is clear. *Dartford* was not cited in terms to the Inspector here. If it is thought that there are inspectors applying *Dartford*, and I do not know the extent of that, that, in my view, is classically a matter for the Court of Appeal to decide whether they should grant permission in respect of that, but not me. I do not consider it is a compelling reason for an appeal, and on the basis that there is not in fact the real prospect of a successful appeal.
- 17 Coming back to the question of ground 4, for the reasons I have already given I do not think there is any impact there as far as 4 and 6 are concerned. Most of the other points are simply disagreements with my findings on rationality and repeating the arguments made before me, and I am clear that my judgment is right.
- 18 I think I should mention, and it will be in my written refusal form, that in my view there is nothing in the *Palmer* point at all, and although *Rottingdean* was relied upon by the prospective appellant, it seems to me entirely to favour the Defendants. I do not think that there is anything in any of the points concerning traffic.
- 19 Again, on appeal 7, so far as *Gladman* is concerned, the appellant's basic approach here was to reserve it for the Court of Appeal. I do not think it is clearly wrong. That is an end of it as far as I am concerned because, as a matter of convention and practice, I am bound by it. If the Court of Appeal want to take an interest in it, then that is a matter which must be addressed to the Court of Appeal. I do not consider, by reason of the nature of the site or the nature of the development, notwithstanding there are heritage assets, that there is otherwise a compelling reason for an appeal where there are no real prospects of success.
- 20 Accordingly permission to appeal is refused.
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CERTIFICATE

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Official Court Reporters and Audio Transcribers
5 New Street Square, London EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge