



Neutral Citation Number: [2024] EWHC 254 (KB)

Case No: KB-2023-002385

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/02/2024

Before :
Dexter Dias KC
(sitting as a Deputy High Court Judge)

Between :

Buckinghamshire Council
- and -

Claimant

(1) Jimmy Barrett

Defendants

(3) Persons Unknown (any person carrying out and/or encouraging and/or facilitating development on, or with an intent to undertake development on or to occupy, the land to the west of the Crowne Plaza Hotel, London Road, Beaconsfield, Buckinghamshire HP9 2XE (land registry title number BM414494) as shown edged in black on the map attached to the order without lawful planning consent)

(No. 2: costs)

Mark O'Brien O'Reilly (instructed by Sharpe Pritchard LLP) for the Claimant
Michael Rhimes (acting pro bono) for the First Defendant

Hearing dates: 25 January 2024

JUDGMENT

Dexter Dias KC :

(Sitting as a Deputy High Court Judge)

1. This is a short judgment on an application for costs.
2. The parties invite the court to make a costs summary assessment and I am satisfied for the purposes of the Practice Direction that there is no good reason not to do so (PD44 §9.2). The costs in question relate to a case where the court granted final injunctions following from several breaches of planning control. This decision should be read in conjunction with the substantive trial judgment that was circulated to parties on 18 January 2024 and published on 29 January 2024 with the neutral citation number of [2024] EWHC 140 (KB).
3. The parties are as they were before, with the same representation. Mr O'Brien O'Reilly of counsel represents the claimant Buckinghamshire Council. The first defendant Jimmy Barrett ("D1") is represented by Mr Rhimes of counsel, who now appears pro bono. It does Mr Rhimes great credit that he continues to act and reflects one of the high values that marks the Bar.
4. The essence of the position is that the claimant council succeeded in its application for final injunctions, both mandatory and prohibitory, against the first defendant Mr Jimmy Barrett. The claimant failed in its application for an injunction against Persons Unknown. It also discontinued its claim against the second defendant on 25 July 2023. That is Mr Thomas Barrett ("D2", and completely unrelated), sued through a company he was director of.
5. The costs dispute was helpfully structured by Mr Rhimes into three issues (1) apportionment; (2) quantum; (3) time to pay. I adopt this rubric.
6. The key legal principles are settled and uncontroversial. They may be conveniently reduced to the following:
 - 1) The general rule under CPR Part 44.2(2)(a) is that the unsuccessful party should pay the successful party's costs;
 - 2) The court has a wide discretion as to costs, including about "the amount of costs to be paid" and "when they are payable" (44.2(1)(b) and (c));
 - 3) The court will have regard to whether a party has succeeded on party of its claim, even if that party has not been "wholly successful" (44.2(4)(b));
 - 4) The "amount" may be limited to a "proportion of another party's costs" (44.2(6)(a)).
 - 5) A party must comply with an order for the payment of costs within 14 days of judgment or order if the amount is specified, unless the court specifies some "other date" (44.7).

§I. Apportionment

7. The claimant's case is that it is entitled to the entirety of the £39,959.40 identified in its statement of costs, save for two reductions. First, £1500 to reflect the failure of the application against Persons Unknown. Second, the £70 discontinuation fee in respect of D2. Jimmy Barrett submits that, adopting a "broad brush" approach as his counsel termed it, the court should divide the costs into three for the three parties against whom proceedings were brought. Mr Barrett should only pay one third of the reasonable costs along 44.2(4)(b) and (6)(a) lines.
8. It is not disputed that costs follow the event and Mr Barrett must pay costs in some form to the claimant council since the claimant was the "successful party" as against him. Nevertheless, Mr Rhimes is correct that this is not a joint and several situation, and the first defendant does not automatically become liable for all the costs in the case upon failing to resist the application against him. The true question here is what costs can be clearly attributed to which defendant.
9. As a matter of principle, it is not generally satisfactory to award costs for distinct parts of the proceedings, unless clearly indicated. Equally, it is not always easy to isolate costs incurred as between different defendants pursued. That said, I cannot accept that the costs attributed to Persons Unknown should be one third of the total. Nor do I accept that costs in respect of D2 should be one third of total. Indeed, there is force in the claimant's submission that the bulk of the costs were incurred after the discontinuance against D2.
10. Mr Barrett made an additional argument: that the court should reflect in the costs award its disapproval of the failed Persons Unknown application. This proceeds on the basis that the application was unreasonable. It is said to be unreasonable for two prime reasons (1) initially, as not being properly justified at all; (2) subsequently, and in any event, following the Supreme Court decision in *Wolverhampton (Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47).
11. At no point in this court's judgment did the court characterise the claimant's application against Persons Unknown as unreasonable. My judgment is that while the application failed, it reflected genuine and understandable concerns on the part of the applicant council about future intrusion onto what is clearly vulnerable land. A "newcomers" injunction is an exceptional remedy as the Supreme Court made plain at [225]:

"It is to be remembered that this is an exceptional remedy, and it must be a proportionate response to the unlawful activity to which it is directed."
12. In the case before me, the court found inadequacies in the process the claimant adopted; there was insufficient consultation with the local community; the temporally unlimited injunction sought was unjustified and no proportionate to the demonstrable risk. However, Mr Barrett's case, maintained at trial, was that it was indeed Persons Unknown and not him who were responsible for the breaches of planning control. The court's decision was that in truth Mr Barrett

was responsible. He had presented a false case. However, the application by the claimant against Persons Unknown was not unreasonable. Indeed, there had been interim relief granted and renewed by previous constitutions of this court. There was little time following the hand down of the Supreme Court's decision on Wednesday 29 November 2023 to dramatically alter course (the Wednesday to Monday 4 December 2024 when the final trial was heard), and although Sharpe Pritchard LLP were involved in both cases, there was undoubtedly an embargo. Moreover, I am not convinced that the court should use costs as a punitive measure, save for rare circumstances. Here Mr Barrett invites the court to significantly reduce costs as an act of "deterrence" and "disincentive" to other councils. Even if this council's application were unreasonable, which it was not, I am not persuaded that a punitive award is appropriate in these circumstances. However, the exceptionality of the jurisdiction to grant injunctions against Persons Unknown, as explained in *Wolverhampton*, should always feature in the anxious strategic thinking about whether to make such applications.

13. I am perfectly satisfied that the bulk of the costs incurred was incurred as a result of having to deal with the claimant's conduct in breaching planning control in a way that the court found to be highly strategic and flagrant. It was Mr Barrett who was chiefly responsible for the planning control breaches, although he did not act alone, having others to assist him in a highly coordinated operation. Doing the best I can, I judge that 80% of the reasonable costs incurred are attributable to Mr Barrett. This raises the question of what is reasonable.

§II. Quantum

14. Costs must be reasonably incurred and proportionate to a number of matters including the importance of the case and the complexity of the issues. I deal with the nature of the case first. Mr Barrett's case is that this was a "relatively simple" matter (Skeleton/§5(a)). The claimant argues the opposite.
15. Here the court had to receive live testimony from two witnesses, Ms Penney on behalf of the claimant and Mr Barrett himself. The thrust of the claimant's case against Mr Barrett was inferential and it was only fair in Art. 6 terms for Mr Barrett to have the opportunity to challenge the claimant's principal witness and expose the limitations of her evidence. Indeed, Mr Rhimes extracted important concessions from Ms Penney that were not clear from her witness statements. Equally, it was important for Mr Barrett himself to have the opportunity to advance his case. He did. Thus, the court does not accept that this was "relatively straightforward". The oral evidence materially added to the case. The level of detail contained in the judgment (that itself had to extend to 20 pages) indicates that the court was obliged to undertake a careful analysis of the entirety of the evidence to assess whether the inferential case was made out. Ultimately, it was. But there was a degree of complexity here that merited proper preparation by parties and the incurring of costs. Therefore, I do not reduce costs because of alleged "simplicity". There was more to it than that.
16. The next criticism related to the instruction of external solicitors. However, given the procedural complexity of applications to the High Court, it was in this case reasonable for the claimant to have instructed external solicitors and independent counsel. Indeed, D1 privately instructed counsel and solicitors.

However, there are elements of unreasonableness in the amounts claimed. It was not necessary for a Grade A fee earner to undertake the amount of work that is stated. There is some force in the submission about the hourly rate being above guidance, albeit guidance is only ever that. However, I am satisfied that the advice of Mr Merrett of counsel was incidental to Mr Barrett's breaches of planning control.

17. Once more, given that this is a summary assessment, the court must do the best it can. I judge that 70% of the properly apportioned costs are recoverable by the claimant.

§III. Time to pay

18. Mr Barrett seeks six months to pay. The claimant submits that at most he should be granted "a number of weeks". No further evidence about Mr Barrett's financial circumstances was put before the court. He did purchase the land in question for £292,500 in the summer of 2023 and was able to privately instruct solicitors and counsel in protracted litigation in the High Court and has therefore had access to significant funds. However, he is not a commercial entity, as the claimant fairly recognises, and cannot draw on endless resources. He is an individual. That said, the claimant is a public authority and the money now owed is money owed in effect to local residents. The fair balance between these competing interests is an extension limited to 6 weeks. This is the "other date" that the court specifies under CPR 44.7(1)(c).

§IV. Disposal

19. While the pro bono representation by Mr Rhimes, as noted, is admirable, I do not judge that there is sufficient here to justify an award under s.194 of the Legal Services Act 2007. The claimant accepted that there should be some reduction due to the outcome of proceedings against D2 and Persons Unknown. The reduction proposed was not enough. The court has corrected that. However, on the main questions of apportionment and reasonableness, while the court has reduced the fees, it is not sufficient to justify a s.194 award.
20. In summary:
1. 80% of the costs claimed are properly apportioned to proceedings against Mr Barrett;
 2. Of that figure, 70% are reasonably and proportionately incurred;
 3. Given Mr Barrett's personal circumstances, there should be an extension of time to pay of 6 weeks from the date of this ruling – 25 January 2024;
 4. Parties to agree an order to reflect the terms of this judgment.
21. From here, the parties can do the mathematics themselves.