

Case No: CO/7635/2012

Neutral Citation Number: [2013] EWHC 1346 (Admin)
THE HIGH COURT OF JUSTICE
LEEDS ADMINISTRATIVE COURT

Sitting at:
Leeds Combined Court
1 Oxford Row
Leeds
West Yorkshire
LS1 3BG

Thursday, 11 April 2013

B e f o r e:

MR JUSTICE SUPPERSTONE

Between:

LEEDS CITY COUNCIL

Claimant

v

LEEDS DISTRICT MAGISTRATES AND ANOTHER

Defendant

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(Official Shorthand Writers to the Court)

Mr Ben Williams (instructed by Leeds City Council, Solicitor) appeared on behalf of the
Claimant

Mr Leo Charalambides appeared on behalf of the **Interested Party**

J U D G M E N T

MR JUSTICE SUPPERSTONE:

1. On 15 June 2012, following a hearing on 14 and 15 May, Leeds District Magistrates' Court (the defendant) allowed an appeal by Shell UK Products Limited (the interested party) against a decision by the Licensing Sub-Committee of Leeds City Council (the claimant) to refuse to grant a Premises Licence in respect of Shell, Pool Bridge, Pool Road, Otley.
2. The Chair of the Justices read out the determination and a copy of the document, which was undated, was provided at the same time to the parties. Following the dismissal of the appeal, the interested party made a costs application. The defendant ordered that the claimant pay the costs of the interested party in the sum of £19,821.75. No reasons were given either orally or in writing for this order. It is this costs order which is challenged in the present proceedings.
3. On 3 July Miss Marshall, Section Head, Regulatory and Enforcement, of the defendant, wrote to the clerk to the Justices of the defendant as follows:

"I enclose for ease of reference a copy of the typed-up decision as given to the parties on the day. I understood from discussion with the Legal Adviser on the day, Mr Mel Davies, that it was likely that the corrected version of the decision would be issued. You will see from the handwritten notes at the end of the decision that amendments were made in relation to the issuing of the licence with conditions consistent with the operating schedule. I understand this was in part the reason for wishing to issue a corrected decision.

This version of the decision also does not include any of the information as to the Costs Order made by the Court on 14 June [I think that should read 13 June]. The Magistrates ordered that Council pay the appellant's costs of the appeal in the sum of £19,821.79. It is the intention of the Council to seek to challenge the Costs Order made by way of case stated procedure.

I would therefore invite you to either issue a corrected decision, which includes the Costs Order made and which sets out the rationale for the making of the Costs Order, or to set out the rationale for the Costs Order in a separate letter to the Council."

4. The following day, Mr Davies, legal adviser to the defendant, relied:

"Just received your letter of the 3rd, I will forward an

amended copy of the justices' reasons to include the words Conditions consistent with the operating schedule as requested, although these were formally announced in Court.

In relation to the second point that you raised, in relation to your challenge to the costs that were awarded against the Council, regrettably, Mr Marlowe the chairman is unavailable until 17th July. I will respond at the earliest available opportunity."

5. On 5 July the claimant requested that the defendant state a case in respect of the costs order. The following day Mr Davies informed Miss Marshall that a further copy of the Justices' reasons with the amendment to the conditions had been sent to the parties. Following further communications between the claimant and the defendant, the claimant decided to challenge the decision by way of judicial review.
6. The judicial review claim form was filed on 19 July 2012. On 9 August the defendant filed an acknowledgment of service, together with grounds for contesting the claim, set out in a document entitled "Submissions on behalf of the Leeds District Magistrates' Court, the defendant". Paragraphs 29 to 33 of that document state as follows:

“29. The award of costs is always a discretionary matter for the Justices which has heard the appeal having regard to all of the facts.

30. In this case the Justices found that the Claimant local authority had not acted on ‘sound grounds’.

31. The Justices determined that in all the circumstances that it was just, reasonable and appropriate to award the full costs for this case.

32. The costs followed the event and, albeit substantial, they had been quantified. The Justices' decision to award the costs in full was not to penalise the Local Authority.

33. In the event the Claimant is successful in this Judicial Review, I respectfully submit on behalf of the Justices that they ought properly to be able to disclose their submissions in writing in such a way as to explain adequately to the High Court the basis upon which the decision was made so as to enable the High Court to determine whether such findings were reasonable in the Wednesbury sense, without exposure to an order for costs."

7. On 10 August the interested party filed an acknowledgment of service. On 22 August when granting permission, HHJ Behrens made this observation:

"In my view, it is arguable in the light of the authorities that the defendant should not have made an adverse costs order against the claimant and that it is has failed to provide adequate reasons for doing so."

In giving case management directions, the judge directed:

"The defendant may, if so advised, disclose in writing the basis on which the decision on costs was made within 35 days of service of this order."

No further document has been filed by the defendant.

8. Mr Ben Williams, for the claimant, submits that the costs order that was made on 15 June was unlawful essentially for three reasons. First, the court failed to have regard to the correct principles when considering costs orders against local authorities following successful licensing appeals. Second, an award for costs was both irrational and unreasonable, having regard to the reasoning for the defendant's decision to allow the appeal. Third, in any event, the court's failure and subsequent refusal to provide any or any adequate reasons for their decision is contrary to the rules of natural justice.
9. The relevant legal framework is clear and not in issue. The application for the licence in this case was made pursuant to section 17 of the Licensing Act 2003 and the decision was made pursuant to section 18. The powers of the Magistrates' Court on an appeal is set out in section 181(2) of the Act. The approach of the Magistrates' Court to appeals under the 2003 Act was reviewed by the Court of Appeal in R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court and others [2011] EWCA Civ 31, which confirmed that before a Magistrates' Court can interfere with the Sub-Committee's decision, it must be satisfied that the decision of the licensing authority was wrong.
10. Section 181(2) also provides that on an appeal against a decision of a licensing authority, a Magistrates' Court may make such order as to costs as it thinks fit. In City of Bradford Metropolitan District Council v Booth [2000] EWHC 444 (Admin), Lord Bingham set out guidance in respect of costs awarded by magistrates pursuant to section 64(1) of the Magistrates' Courts Act 1980. The costs power under section 181(2) of the 2003 Act is, for all intents and purposes, no different to the costs power pursuant to section 64(1) of the 1980 Act.
11. Bradford v Booth has been consistently applied in the context of appeals under the 2003 Act. Lord Bingham stated at paragraphs 23 to 26 as follows:

"I would accordingly hold that the proper approach to

questions of this kind can for convenience be summarised in three propositions:

1. Section 64(1) confers a discretion upon a magistrates' court to make such order as to costs as it thinks just and reasonable. That provision applies both to the quantum of the costs (if any) to be paid, but also as to the party (if any) which should pay them.

2. What the court will think just and reasonable will depend on all the relevant facts and circumstances of the case before the court. The court may think it just and reasonable that costs should follow the event, but need not think so in all cases covered by the subsection.

3. Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour, and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged.”

12. The parties agree that the defendant was referred to the salient case law governing costs in licensing appeals. Mr Leo Charalambides, for the interested party, submits that the reasons for the adverse costs decision are self-evident from the clear and detailed judgment given by the Justices. He is of course there referring to the decision dismissing the appeal. He submits that it is self-evident in this case that the Justices found that the claimant had not acted on “sound grounds”. The evidence relied upon by the Licensing Sub-Committee, and thereafter by the claimant in the appeal, was, he submits, fundamentally wrong. The conduct of the claimant thus merited an adverse costs ruling. He suggested it might be said that further particularised reasons would only add to the embarrassment of the claimant.

13. The words "fundamentally wrong" appear in the copy of the written decision handed to the parties on 15 June, although they do not appear in the version that was sent in early July. There are also some other differences between the two versions. However, counsel agreed that this court should proceed on the basis of the judgment that was read out and handed down on 15 June that is attached to the claim form and is included in the court bundle at pages 10 to 22. I proceed accordingly.
14. The defendant allowed the appeal for the following reasons:
- (1) The decision of the Sub-Committee that the primary use of the premises was as a garage and therefore "excluded premises" under section 176 of the 2003 Act was made, the Committee stated in their reasons, because "the Committee preferred the interpretation of the figures provided by West Yorkshire Police", and "the premises catered predominantly for passing trade rather than local trade".
 - (2) The Justices noted that before they are able to exercise their powers in relation to dismissal or substitution or interference with the decision of the Licensing Committee, they had to be satisfied that the decision was wrong.
 - (3) The judgment noted that Mr Patterson, the Licensing Officer employed by West Yorkshire Police, accepted under cross-examination during the appeal that on reflection his calculations were not accurate, and in consequence the Sub-Committee had been misled.
 - (4) The judgment continued:

"We have not heard any evidence to suggest Mr Patterson's calculations were provided in anything other than good faith.

In the light of this information this court is satisfied that the decision of the Licensing Sub-Committee could not have been anything other than fundamentally wrong.

We are therefore hearing this application, as it were, afresh."

- (5) Just pausing there, the word "fundamentally", in my view, adds little, if anything, to the word "wrong". The Magistrates' Court must be satisfied that the decision of the Sub-Committee was "wrong" before it can interfere with that decision. The finding that the decision of the Sub-Committee was wrong is not challenged. That finding in itself is not sufficient for the making of a costs order.
- (6) The Justices then heard evidence from witnesses called on behalf of the interested party (Mr Lockett, Mr Doyle, Mr Seelig), and the claimant (Mr Patterson, Inspector Coldwell, and Councillors Anderson and Ward), and from an objector. They then heard submissions from the parties.
- (7) The judgment records:

"It is very clear to us that the Police and the Licensing Sub-Committee had an extremely difficult task. In balancing comparative volumes of sale, in an attempt to establish by that method alone, whether the premises were

indeed a 'Garage'.
Case law provides little assistance."

(8) The judgment concludes:

"Taking into account all of the evidence that we have received, from the witnesses who gave oral testimony, from the comparative sales figures, the photographic evidence and in addition the evidence, on oath, by Messrs Lockett, Doyle and Seelig, to the effect that the sale of fuel is not the primary function or primary source of income of this site.

In our view, it has not been established (on a balance of probability) that the premises are used primarily as a garage or which form part of premises which are primarily so used and would therefore be excluded by section 176.

The appeal by Shell UK Oil products Ltd will be Granted."

15. Mr Charalambides, in his skeleton argument, in particular at paragraphs 32 to 47, has referred to numerous authorities on the issue of costs. It is not, in my view, necessary for me to consider them in detail in this judgment. It will suffice to note two points in particular. First, in R (Perinpanathan) v City of Westminster Magistrates' Court and another [2010] EWCA Civ 40, Stanley Burnton LJ in the Court of Appeal at paragraph 40, having reviewed the authorities, summarised the relevant principles in relation to costs.
16. Mr Charalambides emphasises in particular the sixth proposition, namely that a successful private party to proceedings, to which the principle in the City of Bradford case applies, may nonetheless be awarded all or part of his costs if the conduct of the public authority in question justifies it.
17. Second, in each of the cases Mr Charalambides referred me to, some reasons for the costs order that was made or refused were given. Mr Charalambides was not able to point to any decision where no reasons had been given for a costs order and the order had been upheld. Indeed, Mr Charalambides's detailed research has not unearthed any authority where no reasons had been given for a costs order.
18. Mr Williams accepts that the conduct of a public authority may justify an adverse costs award, however he submits that there is no finding made by the defendant of unreasonable conduct by the claimant that would justify an award in this case. The Justices expressly noted and accepted that Mr Patterson had acted in good faith and that the Sub-Committee had been misled by his calculations. Mr Charalambides criticises the Sub-Committee and the claimant for placing too much reliance upon the calculations provided by Mr Patterson, and for failing properly to scrutinise the police evidence.

These may be valid criticisms. However, the defendant did not make a finding that it amounted to unreasonable conduct, and there is no finding that the claimant did not act on sound grounds because of such unreasonable conduct. The position in relation to the costs order made by the defendant is as follows:

- (1) On 15 June 2012 the defendant ordered that the claimant pay the interested party's costs in the sum stated. No reasons for that decision were given orally or in writing.
 - (2) When the claimant on 3 July requested reasons, they were told by the defendant's legal adviser that the Chairman of the Justices was unavailable until 17 July, but that he would respond at the earliest available opportunity.
 - (3) No reasons were provided, and on 19 July proceedings were commenced on the basis of the defendant's failure to provide reasons for making the costs order.
 - (4) Paragraph 30 of the defendant's submission that accompanied their acknowledgment of service stated that the Justices found that the claimant had not acted on "sound grounds". Mr Charalambides properly accepted that these submissions did not amount to reasons for the defendant's decision. Moreover, as Mr Williams observes, the Justice's clerk did not go on to state what unreasonable conduct there was by the claimant that led the Justices to find, assuming for present purposes that they had done so, that the claimant had not acted on "sound grounds".
 - (5) Paragraph 33 of the submissions appears to suggest that the defendant would disclose their reasons in the event that the claimant is successful in this judicial review. Why it should do so at that stage and not during the judicial review proceedings is not made clear. Nevertheless, HHJ Behrens when granting permission gave the defendant a further opportunity to provide their reasons for the costs order if they wished to do so.
 - (6) Despite this further opportunity to provide reasons, no reasons have been provided.
19. In my judgment, the decision of the defendant to allow the appeal does not begin to provide adequate reasons for the costs award that was subsequently made. I do not accept that the claimant is able to understand the basis of the costs decision that was reached.
20. Further, in my judgment, there was no findings of fact made by the defendant that, applying the principles set out in the City of Bradford case and Perinpanathan, would have justified the costs order that was made.
21. For the reasons I have given, this claim succeeds, and the decision of the defendant in relation to costs will be quashed. The default position is that no costs should be awarded upon an appeal being successful. In my judgment, that is the order that should be made in this case.

MR WILLIAMS: My Lord, there just remains the issue as to costs, and I am grateful to my learned friend prior to commencing proceedings that we were both able agree the costs figure.

MR JUSTICE SUPPERSTONE: That is very helpful.

MR WILLIAMS: And the costs figure for the claimant's costs is the sum of £6,278.55.

MR JUSTICE SUPPERSTONE: And, Mr Charalambides, you agree that?

MR CHARALAMBIDES: I agree the quantum of the figure, not the principle.

MR JUSTICE SUPPERSTONE: Certainly, I must hear you on that.

MR CHARALAMBIDES: What I say is this: that your Lordship's judgment has very clearly identified that there is a failing on the part of the Justices, despite being given every opportunity to state their reasons for that costs order. In a sense the interested party are as much a victim of those lack of reasons as the local authority. They have not done anything to exacerbate or overcomplicate this case. They have arrived this morning with a substantial benefit; they leave this afternoon without one. It would be unfair, given that the fault lies with the Justices, for them to bear the costs of the local authority.

MR JUSTICE SUPPERSTONE: The problem with that is, and obviously one has some sympathy -- I mean, not only are they deprived of the costs order that they achieved before the magistrates, but they are now liable for these costs, and as you say, rightly, certainly in part because no reasons have been given, it is down to the magistrates, but your problem is this: that the absence of reasons is such, and it is so glaring and what happened thereafter is so clear that your clients could have taken the decision, instead of instructing you to conduct the research which you very carefully conducted and presented in your argument today, they could have decided that this was a case that they could not possibly contest when permission was granted. It is in those circumstances that, subject to you having anything else to say, I am afraid the claimant is entitled to its costs.

MR CHARALAMBIDES: My Lord, I have nothing further to say, thank you.

MR JUSTICE SUPPERSTONE: I make an order that the interested party pays the claimant's costs in the sum of £6,278.55. I did just note as I was going through the judgment that I said at the outset the order was £19,821.75, and then I think I said something different in terms of 79 pence later. Can you just tell me what the correct figure was?

MR WILLIAMS: My Lord, it is £19,821.75.

MR JUSTICE SUPPERSTONE: That is the figure I first stated. Thank you very much. So any other figure will be amended. Thank you both very much for your very helpful submissions. I can hand back authorities bundles if you would like to have them.