
Costs Decision

Site visit made on 8 February 2017

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 April 2017

Costs application in relation to Appeal Ref: APP/M0933/C/16/3153405 Land at Monton, Cart Lane, Grange-over-Sands, Cumbria LA11 7AB

- 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 Mr Trevor Wilson for a full award of costs against South Lakeland District Council.
 - The appeal was against an enforcement notice alleging, without planning permission, the carrying out of operational development consisting of the increase in the height of the eaves, ridge line and roof plane of the house.
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Decision: The application is granted in the terms set out below.

Reasons

1. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These include where the issue of an enforcement notice may have been avoided by more diligent investigation beforehand, and also where a local planning authority makes vague, generalised or inaccurate assertions about the impact of a proposal, which are unsupported by any objective analysis.
 2. The essence of the applicant's case is that the Council's decision to issue the enforcement notice was not in the public interest. In support of this, the applicant points to the Planning Practice Guidance, which states that a local planning authority should usually avoid taking formal enforcement action where there is a trivial or technical breach of planning control which causes no material harm or adverse impact on the amenity of the site or surrounding area. The applicant considers that the enforcement notice subject to this appeal falls into that category. The applicant also considers that the local planning authority failed to undertake diligent investigation before issuing the enforcement notice, and failed to substantiate the reasons for issuing the notice on appeal.
 3. The breach of planning control alleged in the enforcement is, in summary, the carrying out without planning permission of operational development consisting of the increase in the height of the eaves, ridge line and roof plane of the
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- house. The reason for issuing the enforcement notice may be summarised as the impact on the amenity of surrounding properties by reason of a material increase in the height of the roof plane, eaves and ridge.
4. A number of important points flow from the above. However, it is first necessary to set out the background leading up to the issue of the enforcement notice.
 5. In June 2015, the Council granted a Lawful Development Certificate for rear dormer extensions, together with the conversion of the roofspace and alterations to windows. The legality of that Lawful Development Certificate was initially challenged by local residents but that challenge was ultimately withdrawn. The Lawful Development Certificate therefore remains as a material consideration in terms of the planning history of the appeal property.
 6. Shortly after the Lawful Development Certificate was granted, the Council received complaints about unauthorised works being carried out at the appeal property. These works were amongst a number of matters relating to the property considered at a meeting of the Council's Planning Committee on 25 February 2016. The Officer report to the Planning Committee indicated that the works as constructed had raised the eaves height by 75mm and the ridge height between 25 and 75mm. This was considered by officers to have little, if any, additional impact on the amenities of surrounding residential properties. For those reasons, the recommendation in the Officer report was that it was not considered expedient or in the public interest to take any enforcement action.
 7. The above figures were taken from a report prepared by the NPS Group, which was specifically commissioned by the Council to inform the investigation of the alleged breach of planning control. However, the findings of the NPS Group report were not accurately reported to the Planning Committee. The reference to an increase in the eaves height by 75mm and the ridge height between 25 and 75mm appears in the main body of the NPS Group report, but the overall conclusion of the report was that if any alteration of ridge height *has* occurred (original emphasis), it is in the region of 25 mm maximum at the gable ends. The report then goes on to conclude that, as the gable ends are higher than the main central part of the ridge, it is possible that the majority of the ridge is in fact now lower than originally found. The overall conclusion of the NPS Group report was that the ridge height had not altered significantly, but these other findings was not conveyed to the Planning Committee in the Officer report.
 8. In the event, the Planning Committee did not accept the recommendation in the Officer report and authorised that enforcement action be taken to reduce the roof ridge and eaves height of the property in accordance with the approved Lawful Development Certificate due to the harm to residential amenity. I have been provided with a copy of the Minutes from the meeting of the Council's Planning Committee. Although the applicant has questioned the accuracy of those Minutes in some respects, there appears to be no dispute that the occupiers of some of the neighbouring properties made reference to the impact resulting from the dormer window when they addressed the Planning Committee. However, I note that the resolution of the Council's Planning Committee makes no reference to the dormer window and refers only to reducing the roof ridge and eaves height of the property.

9. In reaching that decision, the Planning Committee had before it the Officer report, which sets out in some detail the background to the matter and specifically refers to the issue surrounding the legality of the Lawful Development Certificate. In addition, the Officer report also made reference to the findings of the NPS Group report, from which the measurements referred to in the Officer report were derived, albeit not accurately recorded. The Committee also heard from a number of local residents as well as a planning consultant representing those residents, and had been shown plans and photographs of the works that had taken place. I further understand that a number of the Members of the Planning Committee had visited the site.
10. A planning committee is not obliged to follow the recommendation of officers, but must have good reason for departing from that advice. In this case, given the amount of information before it, I consider that the Council's Planning Committee was both well placed and fully entitled to reach its own view on the facts of the case and on the expediency of taking enforcement action. I make no criticism of the Council in that respect. However, when challenged on appeal, it must produce evidence to substantiate that decision.
11. To recap, the breach of planning control alleged in the enforcement is, without planning permission, the carrying out of operational development consisting of the increase in the height of the eaves, ridge line and roof plane of the house. In relation to the height of the roof, the main source of evidence before the Council at the time that it was considering whether it was expedient to initiate enforcement action was the report by NPS Group. The NPS Group report requires careful reading and in my view is flawed for the reasons set out in my Decision, but this report appears to be the source of the reference in the Officer report that the ridge height between 25 and 75mm.
12. The NPS Group report was specifically commissioned by the Council to inform the investigation of a breach of planning control reported to it and, in part, informed the decision of the Planning Committee to authorise enforcement action against that breach of planning control. The NPS Group were not instructed to investigate any increase in the eaves height or plane of the roof, and with the benefit of hindsight that was an unfortunate omission. It is also unfortunate that the findings of the NPS Group report were not accurately and more comprehensively reported to the Planning Committee.
13. Nevertheless, by commissioning the NPS Group report, I am satisfied that the Council demonstrated due diligence in investigating the breach of planning control. Moreover, believing the NPS Group report to be accurate, the Planning Committee clearly had regard to that report in resolving that enforcement could not be avoided. The Planning Committee also had other information available to it, in the form of representations from a number of local residents and a report from the planning consultant representing those residents. I understand from the Minutes of the Planning Committee meeting that this included displayed plans as well as photographs of the original roof and the roof as constructed.
14. Taking all these factors into consideration, I am satisfied that the Council complied with the Planning Practice Guidance in terms of the diligence of its enforcement investigation. I am also satisfied that, on the basis of that investigation, the Council was entitled and indeed correct to conclude that the increase in the height did not constitute a trivial or technical breach of planning

control and, without expressing any view as to whether the breach of planning control causes material harm or adverse impact on the amenity of the site or surrounding area, that it was in the public interest to initiate enforcement action.

15. The NPS Group report serves the secondary purpose of providing evidence in relation to the appeal on ground (c): that the matters alleged in the notice do not constitute a breach of planning control. In an appeal on ground (c), the onus of proof is on the appellant to make out the case that there has not been a breach of planning control. It is not the responsibility of the Council to make out the case that a breach of planning control has occurred. Nevertheless, although the Council has not produced any technical evidence to show that the eaves height has been increased or the plane of the roof altered, on the basis of the technical evidence available to it relating to the increase in ridge height, it advanced a logical reason why this must also have been the case. I therefore consider that the Council did not act unreasonably in relation to its case on ground (c).
16. However, the same cannot be said in relation to the appeal on ground (a): that planning permission should be granted. The deemed planning application can only relate to the breach of planning control alleged in the notice: in this case, the carrying out of operational development consisting of the increase in the height of the eaves, ridge line and roof plane of the house. Importantly, the breach of planning control alleged in the enforcement notice makes no reference to the dormer window on the roof.
17. The Council resolved to take enforcement action on the basis of the information available to it that the ridge height had been increased by between 25 and 75mm. That was therefore the position it was defending on appeal. However, nowhere in the Appeal Statement submitted by the Council is it explained how that increase in height, or the associated increase in eaves height, impacts upon the amenity of the surrounding properties. The reason for issuing the enforcement notice has therefore not been substantiated with evidence on appeal. In my view, as set out in the Planning Practice Guidance, that amounts to unreasonable behaviour on the part of the Council.
18. Instead, the appeal statement suggests that the increase in height exacerbates the overlooking of surrounding residential properties resulting, it is suggested, in an unacceptable loss of privacy to the occupiers of those properties. However, that issue does not form any part of the reason for issuing the enforcement notice and does not assist the Council in defending its position on appeal. The inclusion and indeed reliance on this reason also amounts to unreasonable behaviour on the part of the Council.
19. In summary, I conclude that the Council has not acted unreasonably in resolving to issue the notice or in relation to the appeal on ground (c) but has acted unreasonably in not producing any evidence in relation to the appeal on ground (a) and the deemed planning application. In the event, the appeal on ground (a) did not fall to be considered and I make no comment on the planning merits of the development that is subject to the enforcement notice: only that on the evidence before me the Council has not made out its case. Nevertheless, the appellant could not and did not know that this would be the outcome when the Appeal Statement was prepared and Final Comments made. The appellant was therefore compelled to set out his case in relation to the

appeal on ground (a) on the basis of the stated reasons for issuing enforcement notice and the Council's appeal statement, such as it was.

20. The Planning Practice Guidance advises that costs may only 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. In this respect, commensurate with the brevity of the Council's case on ground (a), the points are covered only briefly in the appellant's own Appeal Statement and Final Comments. Nevertheless, to that extent, the appellant did incur unnecessary and wasted expense in responding to the Council's case on that ground of appeal. It follows that a partial award of costs is justified.

Costs Order

1. In exercise of the powers under sections 174, 320 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Lakeland District Council shall pay to Mr Trevor Wilson, the partial costs of the appeal proceedings described in the heading of this decision, confined to the costs incurred in preparing the appeal on ground (a).
2. The applicant is now invited to submit to South Lakeland District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Paul Freer

INSPECTOR