
Costs Decision

Site visit made on 30 October 2018

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 23 November 2018

Costs application in relation to Appeal Ref: APP/J1860/X/18/3203066 Sabrina, Astley Burf, Stourport-on-Severn, DY13 0RY

- The application is made under Sections 195, 322 and Schedule 6 of the Town and Country Planning Act 1990 and Section 250(5) of the Local Government Act 1972.
 - The application is made by Malvern Hills District Council ("the Council") for a full award of costs against Paul Edwards.
 - The appeal was against the refusal of a Certificate of Lawful Use or Development for the continued use of Sabrina as a dwelling-house (C3: use as a sole or main residence).
-

Decision

1. The application for an award of costs is refused.

Procedural Matters

2. The related Appeal Decision dated 5 November 2018 dismissed the appeal.

Reasons

3. The Planning Practice Guidance ("the PPG") 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. In addition the Council have referred to paragraphs 031, 052 & 053 of the PPG all of which I have read and had regard to.
4. I do not agree with the Council that:
 - a) This appeal had little chance of success or that there was no convincing case in support of the appeal. The Council were consistent throughout that the outcome of the appeal was, in part, down to site specific considerations. These will invariably differ with each appeal.
 - b) There was any lack of cooperation by those representing Paul Edwards. On the contrary they appear to have provided all the information that was necessary for the Council to determine the application.
 - c) The lack of an overlay plan showing what was built compared with what was approved was necessary and certainly did not amount to unreasonable behaviour on the part of Paul Edwards.
 - d) Paul Edwards's agent changed their position regarding the size of the footprint of Sabrina. They carried out a site survey prior to the determination of the application and informed the Council of the relevant dimensions including those necessary to calculate Sabrina's footprint. At

the site visit I asked the Council whether they required me to check any of the figures provided by Paul Edwards's agent – they did not.

- e) There was a significant change of approach by Paul Edwards's agent regarding a possible change of use of Sabrina.
- f) Paul Edwards's agents ignored the Appeal Decisions provided by the Council. The Inspector in the Rimmers Bungalow Appeal Decision dismissed the appeal. However, he explained that, "*There is no legally defined measurement or percentage beyond which a discrepancy must be material and it is a matter of fact and degree in each case.*" I agree with that view. Accordingly, Paul Edwards' appeal did not fail because of the decision at Rimmers Bungalow – it fails for the reasons explained in my Appeal Decision.
- g) The lodging an appeal amounts to unreasonable behaviour on the part of Paul Edwards or that there was any lack of understanding of the relevant issues on behalf of those representing Paul Edwards.

Conclusion

- 5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Tim Belcher

Inspector