



Costs Decision

Hearing Held on 3 July 2019

Site visit made on 3 July 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

**Costs application in relation to Appeal A: Ref APP/M3455/C/19/3223185;
Appeal B: Ref APP/M3455/W/19/3215722 and
Appeal C: Ref APP/M3455/W/19/3215725
Land at 1 Sandwell Place, Lightwood, Stoke-on-Trent ST3 7HW**

- 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 Asif Naseem for a full award of costs against Stoke-on-Trent City Council.
 - The Hearing was in connection with the following Appeals:
 - **Appeal A** was against an enforcement notice alleging Without planning permission the erection of a dwelling.
 - **Appeal B** was against the refusal of the Council to grant planning permission for erection of a new two storey family home utilising roof space.
 - **Appeal C** was against the refusal of the Council to grant planning permission for Erection of detached dwelling with rear balcony without complying with a condition attached to planning permission Ref 59699, dated 11 July 2016.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the PPG² advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of unreasonable behaviour include:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - failure to produce evidence to substantiate each reason for refusal on appeal.

¹ Reference ID: 16-030-20140306

² Reference ID: 16-049-20140306

- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant's position is essentially that the dwelling constructed on site is so similar in design to what has been given planning permission by the Council in July 2016 (Ref 59699), that the decision to refuse planning permission for it, and which has thus given rise to the various appeals, was patently inconsistent and unreasonable.
 5. The appellant states that planning permission 59699 was never identified by the Council as an 'on balance' decision or at the limits of what would be acceptable, whilst referring to the variation in building design which is already evident in the area. He says that the eaves height of the dwelling in relation to its neighbour was not identified previously as the pivotal issue it has now become; also that enforcement action should have been taken earlier and that if lesser steps are found to be acceptable then a requirement for total demolition is unreasonable.
 6. Whether the finer detail of development design is acceptable can be a matter of individual planning judgement, rather than objective analysis of technical evidence leading to consensus.
 7. The Council considered that the development as-built, despite being very similar in appearance to that approved, was nevertheless sited at higher ground level which made the building noticeably larger and more prominent. It found the design to be unacceptable at this scale. Whilst the appellant disagreed with this assessment, and irrespective of how fine the judgment was, or how clearly matters were set out in the original report, I have not been provided with any evidence to persuade me that the development should clearly have been permitted on the basis of consistency or that the Council failed to substantiate its refusal reason. I note that the appellant has not sought to argue that there was no material difference between the approved and as-built schemes.
 8. The alternative schemes that were put forward for consideration as potential lesser step requirements, Options 3 and 5, were also materially different to the as-built scheme. Despite its informal advice on how the existing development might be improved and the invitation of a retrospective planning application, the Council was not duty bound to find either of the final alternative schemes put forward to be acceptable in design terms, following more detailed formal consideration. The fact that the acceptability of these alternative designs was not inevitable means that the requirement in the notice to demolish the dwelling in its entirety did not amount to unreasonable behaviour.
 9. There is no dispute that the Council has acted within the time limits prescribed in legislation for the taking of enforcement action. Even if it could have taken enforcement action earlier than it did, the fact that it did not do so does not in itself amount to unreasonable behaviour.
 10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR