



Costs Decision

Hearing Held on 29 September 2020

Site visit made on 29 September 2020

by Simon Hand MA

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

Decision date: 08 October 2020

Costs application in relation to Appeal Ref: APP/P1615/C/18/3216444 Land at 9 Culver Street, Newent, Gloucestershire, GL18 1DB

- 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 Watin Limited for a full award of costs against Forest of Dean District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission the construction of 11 residential dwellings.
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Decision

1. The application for an award of costs is allowed in part in the terms set out below.

The submissions for the parties

2. The appellant maintains that the Council acted unreasonably at all the stages of the process. Prior to and during the committee meeting, issuing the notice and during the appeal process.
3. The Council deny this, they identified harm caused by the unlawful development and the enforcement notice was the result.

Reasons

4. There is considerable discussion in the appellant's costs claim and hearing statement as to the potential nullity of the notice or whether it exceeded the Council's powers. These were not pursued at the hearing and I have not been asked to take a view on nullity, but it does not seem to me there would have been any prejudice that the notice was not served on the owners of Nos 5 and 7 Culver Street as the appeal was fully aired at the hearing, and the fact that a different plan was attached than was seen by the committee does not render the issue of the notice outside the powers of the Council.
5. The key issue is the issue of the notice in the first place. A number of site visits were carried out by the Council from July to September 2018 at which they noted various discrepancies with the development as it was being built from the plans. The most glaring of which was construction of 2 extra houses on the footings of the garage block, but other issues were the extra height to the house on plot 2, a reduction in its garden size, an extension of the site into the gardens of Nos 5 and 7 Culver Street and numerous minor variations form the details of the fenestration, doors, chimneys, road layout and parking.

6. A meeting was held on 13 September between the Council and the appellant at which it seems agreed the appellant explored the possibility of keeping the 2 extra dwellings and of regularising any minor deviations from the plans. The appellant has always considered the houses on plots 1 and 2 were built according to the plans. The appellant suggests when it became obvious the Council were not going to allow the extra 2 houses he ordered their demolition. That work began in early October and was completed on the 13th October. In the meantime the appellant wrote to the Council on 27 September setting out their arguments in an attempt to resolve the situation. No response was made to this letter and the Council moved directly to enforcement action.
7. On the 9th October the appellant informed the Council demolition works were underway but on the same day the committee met to consider the issue of an enforcement notice. The report to committee was based on the premise there were two extra houses, the site had increased in size, the houses on plots 1 and 2 were narrower than approved and that on plot 2 was taller. The report concluded the scheme as built was fundamentally different from that granted planning permission and so the whole development was unlawful.
8. Presumably that report was written before 9 October, but at the committee meeting it was reported the developer had been in touch and had commenced demolition of the two errant houses and that he was also keen to avoid a costly appeal and was open to discussion as to how to set things right, presumably a reference to the letter of 27 September.
9. It seems unfortunate to me that from this point on, these facts seem to have been forgotten. The committee were told *"nothing on the site has been built in accordance with the plans"* and it became clear from the note of the meeting that as it went on the idea that everything was wrong was firmly entrenched as the chairman said *"planning permission was granted for one thing and they have built something completely different"*. Neither of these statements were accurate. The committee were also advised that there was no power to require the development to be altered – it was either demolish or nothing. This is fundamentally wrong.
10. It is not clear when the issue of the gardens to Nos 5 and 7 was first explained, but it seems not until after the notice was issued. So at the point of the committee meeting the state on the ground was the two extra houses were under demolition. The houses on plots 1 and 2 seemed to be too narrow and that on plot 2 was too tall. The site had been extended into the back gardens of Nos 5 and 7, but this was directly behind (and presumably connected to) the houses under demolition, plus a series of minor changes to the details. To require the entire estate to be demolished was therefore unreasonable. However, issuing a notice of some sort was not as there were clearly unresolved issues and that involving the height of the house on plot 2 was not to be easily resolved.
11. An appeal against the notice was issued in November 2018 and in April the next year another meeting was held on site. At this meeting the appellant made a note of what was said. It was clear from the note the enforceability of the streetscene plan was still an issue between the parties, but the other matters such as chimneys, parking and the extension of the site were all resolvable. The possibility of a s73 application was considered, to redesign the houses on plots 1 and 2, but this would have to be separate from the

enforcement appeal. There was still some confusion about the different site layout plans Rev A and Rev D and it was agreed to send a summary of the differences to the Council to agree exactly what the 'as built' version was to be compared to.

12. Unfortunately this seems to be the last contact between the parties. Despite the appellant chasing the Council on numerous occasions and suggesting a draft statement of common ground they were unable to confirm the results of the meeting or the suggested way forward.
13. The Council provided their appeal statement on 17 September 2019 and this was based on the assumption that 11 dwellings were being constructed and the two extra ones were going to extend into the back garden of No5 harming its setting. There is also reference to a listed building at No 1 Culver Street, but it has never been explained what the harm would be. The statement also argued the changes to the details of the fenestration, door arches, chimneys, parking, access and the reduction in the amenity area to plot 2 were all harmful. It is as if none of the efforts of the appellant described above to clarify matters had happened. In the event, at the hearing it was clear the only matters between the appellant and the Council were the houses on plots 1 and 2 and the chimneys. It had always been the case the chimneys would have been put back, it did not require an enforcement notice to achieve that and the roofs of the houses on plots 1 and 2 were redesigned at the site visit and that problem was also resolved.

Conclusions

14. I can fully understand why the Council were deeply concerned when they discovered the two extra houses and the two houses on plots 1 and 2 being too tall, along with the fence in the garden of the listed building, the changes in the details and the confusion over the layout plans. At that stage the phrase *"nothing on the site has been built in accordance with the plans"* was not entirely unreasonable. However, from the 13th September onwards when the parties met on site, the Council, in reporting to the committee, issuing the notice and preparing for the appeal seemed to have acted on the basis that nothing had changed. In reality the only substantive matter at issue between them was the heights of the buildings on plots 1 and 2.
15. In my view the Council acted precipitately in issuing the notice alleging the construction of 11 dwellings without planning permission, when this was actively being remedied. Had they delayed it would have become obvious the matters in dispute were considerably less than at first feared and were restricted to the houses on plots 1 and 2. The requirement to demolish all 11 dwellings was also excessive and seemed to stem from a belief they could not do otherwise when in reality the notice should have required a reversion to the development that had been granted planning permission.
16. However, it does seem the appellant was firm in his view that the houses on plots 1 and 2 were actually built in accordance with the plans and this was a matter of dispute between the parties up until the moment when I suggested I was going to agree with the Council. Then, a redesign was suggested and agreed. I note there is some suggestion of dealing with the deviations from the plans via s73 application back in September 2018, but the issue with the houses on plots 1 and 2 was not a deviation from the plans, but something quite different. Therefore I consider some enforcement action and probably an

appeal were likely to be necessary, just not what took place. I consider a partial award of costs is justified limited to those costs incurred in dealing with the appeal other than for the issue of the houses on plots 1 and 2.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Forest of Dean District Council shall pay to Watin Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in rebutting all the matters raised except for the issue of the height of the dwellings on plots 1 and 2; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to the 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.

Simon Hand

Inspector