
Costs Decision

Site visit made on 9 February 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Costs application in relation to Appeal Ref: APP/B2355/X/20/3257581 Land at Green Street, Rawtenstall

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr I Hunt for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of a certificate of lawful development seeking confirmation of commencement of construction of 1 detached dwelling approved under application 2016/0143.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. Local authorities are at risk of an award of costs if they behave unreasonably with respect to the actual substance of the matter under appeal, or by unreasonably defending appeals. Examples include preventing or delaying development that should clearly be permitted, by failing to produce evidence to substantiate each reason for refusal on appeal, or acting contrary to, or not following established law. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In addition "unreasonable" is used in its ordinary meaning as established by the courts¹ and not in the stricter law definition of "Wednesbury" unreasonable.
4. The appellant has identified that the Council does not dispute the construction of the drain but argues that the works that have been implemented do not relate to any submitted drainage plan, even though permission 2016/0143 does not require one to be submitted. It is also clear to me that in coming to its decision on the LDC application the Council took account of advice from the Building Control Team even though Building Regulations are entirely separate from the requirements of the Town and Country Planning Act 1990. The Council also argues that the works that have taken place are de minimis even

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

when well-established case law sets a low threshold for what are deemed to be material operations.

5. The Council contends that no evidence was submitted by the appellant to demonstrate that the works carried out on site forms part of a drainage scheme to serve the approved development, nor is there evidence to show the pipe laid in relation to the approved dwelling's foundations. Photographic evidence dated 8 April 2019 shows the works taking place and it is possible to identify the approximate position of the trench being dug in relation to other buildings and features in the vicinity. A supplementary plan showing the works in relation to the approved dwelling would have clarified the relationship between the works carried out and the approved development and, although not specifically required by condition, a plan showing the relationship of the works and the drainage scheme being implemented would have been of assistance in this case.
6. It is clear to me that the approved development requires a drainage scheme and that is part and parcel of the permission which has been commenced. Whilst I have concluded that the evidence is sufficient to demonstrate commencement, the Council has interpreted otherwise. I am satisfied that that in coming to its decision the Council has taken account of the correct legislation and case law but has deemed the evidence insufficient to discharge the relevant burden of proof.
7. In order to test the evidence the Council's Planning Officer has consulted the Building Control Team to establish whether or not they have approved the works carried out on site. This may be normal practice, but the fact that there was no record of an application for Building Regulations approval should not have been conclusive in establishing whether commencement of construction had indeed occurred from a planning point of view under the terms of the Act.
8. Finally, the Council has taken account of the extent of works carried out and concluded that they may be described as de minimis even though the bar for the start of development, as established in case law, is low. The evidence before me is that the trench dug is approximately 5 metres long and approximately 1 metre deep and contains a drainage pipe. In the context of the approved development I do not consider these works to be de minimis but rather are material operations sufficient to commence the approved construction of 1 detached dwelling.
9. In a case such as this the test is the balance of probabilities and based on the evidence submitted, I have come to a different conclusion than the Council. However, the Council has taken account of the correct legislation, case law and guidance and, although has arrived at a different conclusion, it has not been clearly demonstrated that it has behaved unreasonably.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

A A Phillips

INSPECTOR