
Costs Decisions

Site visit made on 20 September 2022

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2022

Costs application in relation to Appeal Ref: APP/B2355/W/22/3292697 Zion Cottage, Windy Willows Farm, Saunder Height Lane, Newchurch, Rossendale BB4 9NA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made for full awards of costs by i) Mr Arnoldas Nauseda against Rossendale Borough Council and ii) Rossendale Borough Council against Mr Nauseda.
 - The appeal was against the refusal of planning permission for demolition of Zion Cottage and erection of a 3 bedroomed, detached replacement dwelling.
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Decision

1. Both applications for awards of costs are refused.

Reasons

2. Planning Practice Guidance (PPG) advises that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

Application i) – Mr Nauseda against Rossendale Borough Council

3. The applicant asserts that, in refusing the application, the Council has behaved unreasonably by persisting with objections to a scheme which an Inspector has previously indicated to be acceptable.
4. Planning permission for a replacement dwelling for Zion Cottage was granted through appeal ref APP/B2355/W/20/3259984. As part of that appeal decision, the previous Inspector considered the effect of the scheme on the character and appearance of the area, and on its accessibility to services and facilities. These matters were found to be acceptable, and the appeal was allowed. However, the scheme currently before me is different for a number of reasons, so the previous Inspector's findings do not directly apply.
5. The applicant's case is based on the premise that, like the previous appeal, the current proposal should be treated as a replacement dwelling for Zion Cottage. However, planning permission already exists for a replacement dwelling, and for the current appeal to be treated as an alternative scheme, it would be necessary to ensure that the previously approved scheme would not be implemented. This would need to be done through a signed planning obligation, but as no such agreement has been provided, the application cannot be treated as a replacement dwelling.

6. As the proposal would constitute an additional dwelling, the conclusions of the previous Inspector are not directly applicable. In assessing the effect of the current proposal on the character and appearance of the area and its location sustainability, the Council did not act unreasonably.
7. Furthermore, whilst the current appeal proposes a building of very similar scale, materials and design to that previously approved in appeal ref APP/B2355/W/20/3259984, the change to the proposed siting represents a significant difference between the two schemes. The approved dwelling would be sited immediately to the rear of the existing group of buildings, and would very much form part of the existing cluster. In contrast, the current appeal proposal would be apart from the existing buildings, with clear visual separation from the group. This is a significant change which means that the previous Inspector's findings in relation to character and appearance are not directly applicable to the appeal scheme.
8. In addition, since the previous appeal, the new Rossendale Local Plan has been adopted, which has altered the policy context. There has also been a revised version of the National Planning Policy Framework. Of particular relevance to this appeal is new Local Plan Policy HS10, which sets out specific criteria for assessing proposals for replacement dwellings, including the requirement that a replacement dwelling is not materially larger than the original dwelling. There is no reference to any such policy requirement in the previous appeal decision.
9. The differences in both the scheme itself and the policy context mean that the Council was justified in considering afresh the effect of the proposal on the character and appearance of the area.
10. The previous Inspector found the access to be suitable, but again that was on the basis that the proposal was for a single replacement dwelling. As previously identified, the lack of a legal agreement means that the proposal would effectively form a new dwelling. Given this circumstance, the Council did not act unreasonably by considering the locational sustainability of the proposal.

Application ii) – Rossendale Borough Council against Mr Nauseda

11. The Council has asserted that the applicant behaved unreasonably by only supplying relevant information about the access at appeal stage, when it could have been provided earlier. This would have avoided the need for the Council to address this matter in its appeal statement.
12. During the application, the Council requested confirmation that the applicant has a legal right to use the footpath for vehicular use. A response was not forthcoming at application stage, but additional information was provided at the appeal stage which addressed this matter, at least in part. However, the previous Inspector found the access to be suitable, and the question of the applicant's legal right to use the access, including the proposed additional section beyond Windy Willows, is a separate matter which falls beyond consideration of the planning merits of the case.
13. The question of the legal right to use the access could have been resolved before, but even if it had, the application would still have been refused and so an appeal would not have been avoided. As such, unreasonable behaviour

which lead to unnecessary costs in the appeal process has not been demonstrated.

14. The Council has also alleged that the applicant has behaved unreasonably by persisting in treating the proposal as a replacement dwelling, when it should be regarded as a new house. However, the Council did accept the application on that basis. At validation stage, the description of development was altered by the Council to provide additional detail, but the revised wording, which appears on the decision notice, refers to a replacement dwelling.
15. The Council's suggestion that the proposal is too far from the original dwelling to be regarded as a replacement is not backed up by any detailed guidance or policy, rather is a matter of planning judgement.
16. For the reasons set out above and in the decision notice, I agree that the proposal does not meet the requirements for a replacement dwelling. However, I do not find the applicant's approach to be unreasonable.

Conclusion

17. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by either party. Therefore, both claims for costs fail.

R Morgan

INSPECTOR