



Costs Decision

Hearing Held on 17 January 2023

Site visit made on 17 January 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Costs application in relation to Appeal Ref: APP/Z1510/C/21/3285201 Black Gables, Dunmow Road, Great Bardfield, Essex CM7 4SD

- 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 NDR Contracting Ltd for a full award of costs against Braintree District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging:
1. The erection of two '2 storey' detached dwelling houses and two 'single storey' garages. 2. An engineering operation increasing land levels.
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Decision

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

The submissions for NDR Contracting Ltd

2. The basis for the application is on procedural grounds. Essentially, the issuing of the enforcement notice could have been avoided if there had been more engagement by the Council. It is not clear that it was expedient to issue the notice especially as it refers to an increase in the height of the dwellings by 1m yet in the Council's Statement of Case this was changed to 0.5m. Similarly, the Council backtracked from their allegation of an increase in ground levels of 0.4m. Finally, towards the end of the Hearing event, the Council accepted it was reasonable to keep the arisings on site when the notice required them to be removed.

The response by Braintree District Council

3. The reason it was expedient to issue the notice was because of the effect of the development as built on the living conditions of neighbouring occupiers. The basis of the costs application is misconceived, especially as the applicant conceded the ground (c) appeal at the event. The mitigation discussion at the Hearing does not mean that it should have happened 18 months ago otherwise planning permission would have been granted to retain the development. The Council's response to the arisings point at the Hearing was a pragmatic and reasonable response to the applicant's submissions at the Hearing. The Council has no control over whether the houses would be rebuilt and therefore it was reasonable, when the notice was drafted, to require that the arisings be removed.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur or necessary expense or wasted expense in the appeal process.
5. The Council received complaints from local residents that the dwellings were being built higher than they should be and that levels had been raised around the new buildings. It appears to me that the Council were diligent in carrying out their investigations. They visited the site several times, issued and received a response to a Planning Contravention Notice and commissioned their own survey of levels across the site. Having gathered and considered all this information, they concluded there had been a breach of planning control. Having regard to the provisions of the development plan and the nature of the breach, it was decided their only option was to issue a notice, not to request an application. This was because the only way to remedy the breach was to require the houses to be demolished.
6. Reasons were clearly stated, as required, in the notice, setting out why it was expedient to issue the notice. The applicant may have disagreed with them but the particular measurement of 1m referred to by the applicant was prefaced by the word "approximately" in the reasons and was expanded upon in more precise detail in the Council's Statement of Case. The applicant had an opportunity to respond to that at the Final Comments stage of the appeal but chose not to. At this stage, I therefore find no unreasonable behaviour by the Council.
7. At the Hearing, during my opening remarks, I set out it was necessary to put the notice in order and led a discussion on whether it was necessary or not to include the words "an average height of 0.4m" within the allegation. At this point the Council accepted the phrase was not necessary but it was my decision to proceed without the phrase, for the reasons set out in my decision. I therefore conclude there was no unreasonable behaviour by the Council at this stage.
8. With regard to the response to the ground (f) appeal at the Hearing, I find, as the Council explained, that it was a pragmatic and reasonable response to the details submitted by the applicant at the Hearing. At the time the notice was drafted, the Council did not know that the applicant could dismantle the houses, and set the structural frames, materials and windows to one side, pending a reconstruction. Furthermore, the Council could not know it was possible to reconstruct the houses in this manner. Therefore, it was reasonable to specify in the notice that the arisings from the demolished houses be removed from the site. I conclude there was no unreasonable behaviour by the Council at this stage.

Conclusion

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

D Fleming

INSPECTOR