
Costs Decisions

Site visit made on 15 April 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Costs application in relation to Appeal Ref: APP/P3420/C/23/3316348 1 Beresford Crescent, Newcastle-under-Lyme ST5 3RG

- 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 Dr Shamylla Samad for a full award of costs against Newcastle-Under-Lyme Borough Council.
 - The appeal was against an enforcement notice alleging the erection of a two-storey side extension.
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Costs application in relation to Appeal Ref: APP/P3420/D/22/3312162 1 Beresford Crescent, Newcastle-under-Lyme ST5 3RG

- 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 application is made by Dr Shamylla Samad for a full award of costs against Newcastle-Under-Lyme Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of a two-storey side extension.
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Costs application in relation to Appeal Ref: APP/P3420/D/22/3312165 1 Beresford Crescent, Newcastle-under-Lyme ST5 3RG

- 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 application is made by Dr Shamylla Samad for a full award of costs against Newcastle-Under-Lyme Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of a two-storey side extension.
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Decision

1. The applications for awards of costs are refused.

Reasons

2. Parties are expected to meet their own costs of appeal proceedings, but awards of costs may be warranted where one party has behaved unreasonably putting the other party to wasted expense. The appellant's claims for costs here are founded on the Council allegedly failing to substantively justify its reasons for refusing planning permission and for issuing the enforcement notice. Additionally it is considered that the Council was 'wrong in law' to require the appellant to submit an application for retrospective permission, where the changes sought were capable of being dealt with pursuant to an application to develop land without complying with conditions previously attached (a 's. 73' application).

3. On the latter point, although the Council gave pre-application advice to the effect that a full application was necessary, the s. 73 application submitted was validated for consideration and was not refused for the reason that the changes went beyond the scope of what could be permitted under the section.
4. It is therefore the case that the Council, when determining the application, departed from its pre-application advice on the subject, but it is not possible to say that two applications were made at the Council's behest rather than of the appellant's own volition. The retrospective application was made on the same day as the s. 73 application, rather than waiting to see how the s. 73 application would first be dealt with.
5. As to the substantive matters, I have found the Council's logic somewhat flawed where they say harm is caused as a mere consequence of the changes made to the development to make it larger than was previously approved on appeal. They do however point out that it has, in their view, a minimal set back and a negligible drop in ridge height and that it does not appear subordinate to the host dwelling.
6. Planning Practice Guidance advises that local planning authorities are at risk of awards of costs where they behave unreasonably with respect to the substance of the matter under appeal, such as by unreasonably refusing permission or unreasonably defending appeals. Examples include where development is prevented or delayed which should clearly be permitted.
7. Although I have come to the decision to grant planning permission, I have done so on balance and do not find this to be a case where development should 'clearly' have been permitted. The appellant has departed from an earlier permission in material ways, increasing the size of an extension that local policy (irrespective of the content of supplementary guidance) requires to achieve subservience to the pre-existing dwellinghouse. These are matters of judgment on which different views may legitimately be reached. Although ultimately I have disagreed with the Council on these matters this is not to say that their approach is unreasonable.
8. As to the decision to issue an enforcement notice whilst the planning appeals were in progress, whilst it is the case that the question of enforcement is commonly deferred pending the outcome of a planning appeal there is no requirement for this to be the case. The expediency of enforcement action is in the discretion of the Council and here it enabled the appeals to be conjoined and disposed of simultaneously. Other grounds of appeal against an enforcement notice are available and it is only with hindsight (having regard to the enforcement appeal having been made on ground (a) alone) that one is able to say that an enforcement notice issued after the planning appeals had been determined would have been unlikely to have been the subject of a further appeal. The appellant does not deny that development has been carried out in breach of planning control, and with a history of previous refusals at the site for similar developments, and thus I do not find that the Council were unreasonable in issuing an enforcement notice.
9. The final main concern of the appellant's is that the Council has given undue weight to vociferous neighbour objections raising matters that are not relevant to the development proposals under consideration. The various officer reports before me give no succour to this contention. Those reports had regard to the

principal material issues, did not place weight on irrelevant matters, and were adequately reasoned.

10. For these reasons the applications for an award of costs against the Council are refused.

Laura Renaudon

INSPECTOR