



Costs Decision

Site visit made on 10 August 2009

by **Stuart Hall** BA(Hons) DipTP FRTPI MIHT

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

The Planning Inspectorate
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Decision date:
21 August 2009

Costs application in relation to Appeal Ref: APP/C3430/A/09/2105184 Land at Dellwood, Top Road, Acton Trussell, Staffs ST17 0RQ

- 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 Mr Colin Hawkins for a full award of costs against South Staffordshire District Council.
- The appeal was made against the refusal of planning permission for residential development comprising 3 No. 2 storey detached dwellings with garages.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Procedural Matter

1. Though the application for costs formed part of the initial appeal, the Council did not make a response to that application within the prescribed period. However, following my site visit the Council were invited to make a response, and the applicant was afforded an opportunity to comment on it.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
 3. Paragraph B29 of the Circular explains that failing to grant planning permission for a scheme subject of a recently expired permission, where there has been no material change in circumstances, may lead to an award of costs. In this case, permission was granted in outline in 2005, so would have expired at some time in 2008. In paragraph 4 of my appeal decision I record it being agreed that the layouts of the 2005 and current schemes are the same. I conclude at paragraph 13 that there has been no material change in circumstances.
 4. Though I do not accept the Council's reasons for refusal, with regard to paragraph B16 of the Circular I consider that they are sufficiently complete, precise, specific and relevant for the applicant to identify what the Council consider to be objectionable. However, the Council did not submit a statement in support of its decision within the prescribed period. Accordingly, the reasons for refusal are not supported by clear evidence, as required by paragraph B16. It follows that realistic and specific evidence, mentioned in paragraph B18 as a defence against a costs award, is not apparent.
 5. The Council having taken a decision contrary to the advice of their officers, the applicant's post-decision meeting with those officers was unproductive. This left him no reasonable course other than to appeal. Having not accepted that
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advice, the Council have failed to show reasonable planning grounds and to produce relevant evidence to support their decision, contrary to advice in paragraph B20 of the Circular.

6. I therefore find that unreasonable behaviour by the Council resulting in unnecessary expense, as described in Circular 03/2009, has taken place and that a full award of costs is warranted.

Formal Decision and Costs Order

7. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that South Staffordshire District Council shall pay to Mr Colin Hawkins the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
8. The applicant is now invited to submit to South Staffordshire District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Stuart Hall

INSPECTOR



Appeal Decision

Site visit made on 10 August 2009

by **Stuart Hall** BA(Hons) DipTP FRTPI MIHT

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Decision date:
21 August 2009

Appeal Ref: APP/C3430/A/09/2105184

Dellwood, Top Road, Acton Trussell, Staffs ST17 0RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Colin Hawkins against the decision of South Staffordshire District Council.
- The application (Ref 08/00908), dated 14 August 2008, was refused by notice dated 20 February 2009.
- The development proposed is residential development comprising 3 No. 2 storey detached dwellings with garages.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal and grant planning permission for residential development comprising 3 No. 2 storey detached dwellings with garages at Dellwood, Top Road, Acton Trussell, Staffs ST17 0RQ in accordance with the terms of the application Ref 08/00908 dated 14 August 2008, and revised plan 833/1A submitted therewith, subject to the conditions in the attached schedule.

Main Issues

3. There are 3 main issues in this appeal. The first is the effect of the proposed development on the living conditions of the occupiers of adjoining properties, primarily in relation to privacy. The second is its effect on the character and appearance of its surroundings. The third is whether, in relation to those issues, there have been any material changes in the development plan or other material considerations since an earlier scheme was approved in 2005.

Reasons

4. Approval is sought now for details of access and layout. There are no objections from the Council regarding proposed accesses, following submission of revised plan 833/1A, to which the Council's decision relates. It is agreed that the layout shown on that plan is the same as that granted outline planning permission by the Council in 2005 (ref 05/00373/OUT).

Living conditions

5. The submitted layout shows that the rear garden lengths of plots 1 and 2 would not meet the normal requirement, primarily to protect privacy, set out in Appendix 1 of the adopted *South Staffordshire Local Plan* (LP). However, mature trees and thick hedges on the appeal site help to protect the privacy of occupiers of St James Crescent dwellings to the north and north-east of

proposed main elevations. Their longer rear gardens secure a gap of some 30 metres (m) between existing and proposed dwellings.

6. The plot 3 dwelling would be much closer to Celyn House, situated to the south-east and on much lower ground. However detailed control over window positions could ensure that its occupiers' privacy would be safeguarded. Occupiers' concerns about structural stability would be addressed under the Building Regulations.
7. The LP Appendix 1 guidance explains that the normal minimum length of rear garden may be relaxed where privacy would be adequate, the minimum garden area of 65 square metres would be provided, and a layout satisfactory in other respects would be achieved. Noting the Council's evidence that the proposed garden areas would be adequate, the above considerations persuade me that such a relaxation would not result in harm in this case.
8. I conclude that the scheme would maintain an acceptable quality of privacy, and would not harm the living conditions of the occupiers of adjoining properties. Accordingly, it would comply with those aspects of saved LP Policies H19 and BE26, expanded in LP Appendix 1, concerned with living conditions.

Character and appearance.

9. The street scene is characterised by a mix of house types and designs, mainly 2 storey, set amidst mature trees and hedges. The thick and high front boundary hedge disguises the low density of development within the plot. This relative spaciousness is not echoed in adjoining development to the south, or to the west across Top Road where there is a row of open fronted suburban housing. Though parts of the frontage hedge would be removed to provide access and visibility splays, significant sections would be left intact. These could be augmented with new planting behind required sight lines.
10. The Council has been advised that minor incursions within the root protection areas of trees protected by Tree Preservation Orders would not put the trees' health and life expectancy at risk. I have no cause to differ. Protected lime trees beyond the site boundary would overhang the secluded rear garden of the plot 1 dwelling. However, they would be well clear of the dwelling. In my view, any subsequent request to prune canopy spread significantly, to reduce overshadowing, could be reasonably resisted.
11. Contrary to the Council's third reason for refusal, I saw that the 3 dwellings, assuming they have conventional roofs above 2 storeys as envisaged, would not break the existing skyline. The mainly protected tall trees that border the site to the north and east would continue to provide a backdrop to the development when viewed from lower ground to the south in Top Road.
12. Set back between 10 and 15 m from the road, behind sections of retained hedge, the dwellings would not be seen from the north. Though there are distant views of countryside from that point, housing on the west side of Top Road and a substantial housing estate off St James Crescent to the east are also visible. Therefore the scheme, located well within the built up area of Acton Trussell, would not adversely affect the character of the wider rural area.
13. Bearing these points in mind, I conclude that the scheme would not detract from the character and appearance of its surroundings. Accordingly, it would comply with those aspects of saved LP Policies H16, H17, H19 and BE26 that seek to protect character and appearance.

Any material changes

14. *Planning Policy Statement 3 (PPS3) Housing* has been published since application 05/00373/OUT was approved. However, in my view the scheme reflects PPS3's advice on the effective and efficient use of land while observing its guidance on achieving high quality housing. I have not been made aware of any other changes in national or local planning policies that bear on the appeal.
15. The 2005 permission restricted 2 storey development to the use of roofspace above ground floor accommodation. However in 2006, when for other reasons permission for an alternative scheme was refused, the Council did not object to the principle of 2 storey development. Having regard to my conclusions above, I consider that the appeal proposal gives rise to no new issues in this respect. I conclude that there have been no material changes in the development plan or other material considerations since the 2005 scheme was approved.

Planning conditions

16. I have considered the parties' suggestions as to conditions in the light of advice in *Circular 11/95 The Use of Conditions in Planning Permissions*. Where appropriate, I have amended suggested wording to reflect that the proposal is in outline and to accord more closely with advice in the Circular.
17. Conditions relating to completion of the accesses, visibility splays, and vehicle parking and manoeuvring areas would serve the interests of highway safety. A ban on any gate would be excessive, but space should be available for a car to stand clear of the highway. Though there are no footways on Top Road, pedestrian and vehicular traffic appear to be light. Therefore, in the absence of evidence to the contrary I am not persuaded that road safety interests justify suggested control of employee parking in the course of development.
18. New landscaping can be controlled when dealing with that reserved matter, though suggested control to protect existing vegetation is appropriate. Prevention of any change in ground levels is not practical on this sloping site, and control over finished floor levels would be sufficient to safeguard appearance and neighbours' living conditions. The local Historic Environment Record supports a precautionary approach to possible archaeological interest in the site, justifying a condition based on the model in *Planning Policy Guidance: Archaeology and Planning*.
19. The Circular explains that permitted development rights should be removed only in exceptional circumstances. The continued safeguarding of privacy interests justifies the removal of rights in relation to the enlargement, improvement or other alteration of the dwellings. However, I find no cause to remove rights to erect porches or structures within curtilages.

Stuart Hall
INSPECTOR

Schedule of conditions

- 1) Details of the appearance, landscaping and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the first occupation of any dwelling hereby permitted, the access drives shall be constructed with surface water interceptors across the drives adjoining the carriageway boundary, parking and vehicle turning areas shall be surfaced in a bound material, and visibility splays shown on approved plan 833/1A shall be formed. Thereafter, the parking areas shall not be used for purposes other than the parking of vehicles, and the visibility splays shall be maintained clear of any obstruction to visibility above a height of 0.6 metres above the adjacent carriageway level.
- 5) No gate or other obstruction to the free passage of vehicles shall be erected across the access drives within 5 metres of the highway boundary, and any gate or other obstruction shall not be erected in a manner that would enable it to be opened towards the highway.
- 6) No development shall commence until protective fencing constructed in accordance with BS5837:2005 has been erected in positions first submitted to and agreed in writing by the local planning authority. Approved protective fencing shall be retained throughout the course of the development hereby permitted.
- 7) No development shall commence until details of proposed drainage runs and other excavations, including those for the construction of access drives, parking and vehicle turning areas, have been submitted to and approved by the local planning authority. The details shall include an arboricultural method statement in accordance with which only no dig techniques shall be used where specified. The development shall be carried out in accordance with the approved details.
- 8) No construction materials, equipment, plant or oil tanks shall be stored within the canopy spread of any tree or hedge shown to be retained on plans approved under conditions 1 or 6, and no fire shall be made within 6 metres of any such canopy spread.
- 9) No development shall commence until details of finished floor levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No development shall commence until implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which shall be first submitted to and approved in writing by the local planning authority.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no dwelling shall be enlarged, improved or altered in a manner falling within Class A in Part 1 of Schedule 2 to that Order.