



Costs Decision

Hearing Held on 23 November 2021 and 26 January 2022 (Virtual Event)

Site visit made on 23 November 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

**Costs application in relation to Appeal A: APP/P4415/C/20/3265333;
Appeal B: APP/P4415/W/20/3256298 and
Appeal C: APP/P4415/W/20/3262508
Land at Hepworth Drive, Swallownest, Sheffield**

- 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 Mr Kevin Pullan for a full award of costs against Rotherham Metropolitan Borough Council.
 - The Hearing was in connection with an appeal against an enforcement notice alleging Without planning permission, the unauthorised erection of 2 detached dwelling houses and a pair of semi-detached houses (shown on attached plan as Plots 4, 4A, 5 and 5A) and appeals against the refusal of planning permission for a pair of semi-detached houses and two detached houses.
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Decision

1. The application for a full award of costs is refused. However a partial award of costs against Rotherham Metropolitan Borough Council is approved in the terms set out below in the Costs Order.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 047 of the PPG² advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters at the appeal. Examples of unreasonable behaviour include: -
 - failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.
 - withdrawal of any reason for refusal or reason for issuing an enforcement notice.
4. The appellant's case is that the Council's failure to notify interested parties resulted in a wasted Hearing; that another Hearing could have been averted had the Council completed negotiations with the appellant and communicated

¹ Reference ID: 16-030-20140306

² Reference ID: 16-047-20140306

its position to the Planning Inspectorate in a more timely manner; also that the Council only withdrew reasons for resisting the appeal, notably in terms of effect on light, at a late stage in the process, during the Hearing itself.

5. Following the original opening of the Hearing it became apparent, after the Council had made internal enquiries, that certain interested parties who shared a boundary with the appeal site had not been notified regarding the Hearing arrangements.
6. It was possible to conduct some business on the day, for example establishing that the appellant sought to withdraw one of the planning appeals and a number of the enforcement appeal grounds; hearing objections to the scheme from one of the interested parties and conducting an accompanied site visit. I also acknowledge that the main parties used some of the time allowed by the adjournment to discuss amendments to the development, with a view to reaching a compromise solution.
7. However, aside from this, it was not possible to proceed further with the Hearing on that day due to the risk of interested parties being prejudiced. Whilst I note that the properties not consulted by the Council were relatively new, the records provided indicate that they had still been consulted by the Council regarding the original appeals several months beforehand. I am not therefore persuaded that this is a reasonable excuse for the Council's oversight.
8. I consider that the failure to notify interested parties resulted in the need for the Hearing to be adjourned to a second day, when the proceedings were otherwise likely to have been completed in a single day.
9. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated by the failure to notify parties of the Hearing, and that a partial award of costs is justified.
10. The Council and appellant have in the meantime proceeded to discuss amendments to the development with the intention of overcoming the Council's objections. It appears that the Council has provided informal advice about the amendments and that a formal planning application relating to this has been submitted.
11. However there is no certainty that had this advice been given more quickly or communicated to the Planning Inspectorate, or had the planning application been processed more quickly it would have led to the remaining appeals being withdrawn. There is also no suggestion that the Council is minded to withdraw the enforcement notice, especially as it would likely seek to leave this sanction in place in order to secure any subsequently agreed amendments. I am therefore simply not persuaded that a Hearing could have been averted.
12. In any event I did take the opportunity to consider the amendments subject to the revised planning application in the context of the planning appeals before me. However, and without any prejudice to the outcome of that application, I determined they could not be regarded as part of the as-built (Plot 5) scheme.
13. There is a duty on applicants to provide accurately measured drawings and accurate supporting information. Measurements taken at the appeal site visit served to confirm that the distances between Plot 5 and No 8 Doctors Row and Plot 4 and No 2 Doctors Row had been presented inaccurately in some of the

appeal documents. Notably one of the sectional drawings depicting the application of the so called 25-degree rule between Plot 5 and No 8 showed the gap to be 11.4 metres (when in reality it was 10.9 metres). This drawing also differs with a second sectional drawing between the two plots (Sk 30/3/20 Sht 2). Such ambiguity can serve to undermine the credibility of the information presented. In addition the appellant's planning appeal statement cited the gap between Plot 4 and No 2 as 11 metres (when in reality it was 11.4 metres).

14. The Council was strongly influenced, in its decision on daylight impact, by the application of the 25-degree rule, as set out within the South Yorkshire Residential Design Guide. It withdrew its objections to the as-built scheme, in terms of daylight loss. However it seems to me that this was only after the measurements taken at the appeal site visit had served to correct originally submitted inaccurate measurements, and persuade the Council that the so called 25-degree rule could be achieved, at least in relation to Plot 4 and No 2.
15. Given the corrections and clarifications, only at this late stage, I am not persuaded from the information before me, that the Council's late change of stance was unreasonable, despite what would become unnecessary preparatory work for the Hearing, with regard to natural light impact, being undertaken by the appellant. Therefore the fact that the objections were only withdrawn during the Hearing does not have a significant bearing in this case.
16. I conclude that the process of amending the proposed development and the withdrawal of objections, as highlighted in the appellant's costs application did not amount to unreasonable behaviour resulting in unnecessary expense. This, however, does not overcome the issue in relation to which I have concluded above that a partial award of costs would be justified.

Costs Order

17. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Rotherham Metropolitan Borough Council shall pay Mr Kevin Pullan, the costs of the appeal proceedings, limited to those costs incurred in relation to the need for the Hearing to be adjourned to take place on a second day; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned appeals more particularly described in the heading of this decision.
18. The applicant is now invited to submit to Rotherham Metropolitan Borough 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.

Roy Merrett

INSPECTOR