



Costs Decision

Site visit made on 3 July 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Costs application in relation to Appeal Ref: APP/P4605/W/23/3334827 20 Tudor Hill, Sutton Coldfield, Birmingham, West Midlands, B73 6BH

- 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 Tim Shaw for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of planning permission for the change of use of existing ancillary/incidental accommodation to a separate unit of accommodation.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the PPG") advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the PPG gives examples of behaviour which may give rise to a substantive award of costs against a local planning authority, including "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations", and "refusing planning permission on a planning ground capable of being dealt with by conditions". The applicant considers that the Council's behaviour in determining the planning application falls broadly within these two examples.
4. The Council had previously granted planning permission for the construction of the appeal building and its use as residential accommodation ancillary to the main dwelling No 20 Tudor Hill¹. For reasons set out in my main decision, on the balance of evidence before me I found that the proposed development would be acceptable in terms of its effects both on the character and appearance of the area, and in respect of living conditions. However, that I reached a different conclusion to the Council on these matters is not in itself an indication that their reasons for refusal were unsubstantiated.
5. In my own experience I have seen several cases where the use of a building as independent, rather than ancillary, residential accommodation would not be acceptable for various reasons. Examples of such reasons include the harmful visual impact of physical alterations necessary to support such a change, lack of privacy, noise disturbance from increased comings and goings, increased

¹ LPA Ref: 2023/00734/PA

parking stress, and so on. There are therefore differences between the two uses which need to be taken into account in each case – that a building may be suitable for one purpose does not make it automatically so for the other.

6. For this proposal, the Council's officer report and appeal statement set out its concerns about the effect of creating small residential unit within the curtilage of a much larger existing house. While this was in terms which I ultimately did not find persuasive, that does not signify that the appeal development should so clearly have been permitted that it was unreasonable for the Council to have concluded otherwise.
7. The applicant had referred to two cases² near the appeal site where relatively small outbuildings had been converted to residential use. However, for reasons which are set out more detail in my main decision, while I found them to be examples of sympathetic development, the passage of time and subsequent changes to the development plan since they were approved meant that they did not lend significant weight to the appeal scheme. That the Council did not treat them as setting a "precedent" is not indicative of it behaving unreasonably. Similarly, the lack of detail before me meant that earlier cases where self-contained residential accommodation had been approved on the appeal site did not in itself weigh significantly in favour of the appeal scheme – they are not an indicator that the appeal scheme should clearly have been permitted.
8. Although the applicant's claim for an award of costs referred specifically to matters being addressed by conditions, it is not clear from the statement which aspect of the proposal this is referring to. The applicant has referred to the amount of garden space proposed, but the Council's officer report specifically noted that this would be acceptable.
9. The applicant also suggests that the Council was unreasonable in refusing to accept amended plans which, as I have set out in my main decision, addressed the second reason for refusal relating to access to the building. However, while the applicant comments that they "would have would have made any changes necessary regarding the access", the amended drawings submitted with the appeal were dated November 2023, while the planning decision notice was dated 12 October 2023 – there is nothing before me to demonstrate that such drawings were available to, and unreasonably or uncooperatively refused by, the Council ahead of determining the planning application.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated, and an award of costs is not therefore warranted.

M Cryan

Inspector

² The third case which the appellants have described in their claim for an award of costs was a building used as a garage rather than as a dwelling, and so was not directly comparable to the appeal scheme.