



Costs Decision

Site visit made on 23 October 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Costs application in relation to Appeal Ref: APP/N4720/D/24/3347130 37 Abbeydale Gardens, Kirkstall, Leeds LS5 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 Mr D Watson for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of planning permission for part two storey part single storey side and rear extension.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (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. PPG explains that unreasonable behaviour in the context of an application for an award of costs may be either:
 - procedural – relating to the process; or
 - substantive – relating to the issues arising from the merits of the appeal.
3. The applicant claims that the Council has not referred to nor demonstrated any consideration of the approved scheme at the site or the Planning Statement explaining the situation. It is claimed that no reference was given to the Sun Path Study complete, and no reference made to the approved parking arrangements. Consequently, the applicant argues that the Council has failed to assess the proposal correctly. Additionally, it is claimed that the refusal was issued without consultation with the relevant consultees and as such, again failed to assess the proposal correctly. The failure to consider the relevant material factors in relation to this proposal and lack of contact to ascertain or clarify matters is claimed to have led to the need for this appeal.
4. The PPG advises behaviour that may give rise to a procedural award of costs including, amongst other matters: lack of co-operation with the other party or parties and deliberately concealing relevant evidence at planning application stage or at subsequent appeal. PPG also advises behaviour that may give rise to a substantive award of costs including, amongst others: not determining similar cases in a consistent manner; refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed

development to go ahead; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

5. I can understand the applicant's frustration at the Council for not referring to the previous approval at the site which is a significant material consideration in this case. That said, the extant approval would not mean that the current scheme would be acceptable as whilst it is the same in some respects which is discussed further below, it does propose a different scheme to that previously approved. These elements therefore need to be considered on their own merits with the extant approval forming a material consideration. Based on the explanation set out in the Council's Officers' report, I am satisfied that the Council had reasonable concerns about the proposed development in terms of its impact on the living conditions of existing occupiers of the neighbouring property particularly in relation to outlook. An appeal on this basis was therefore unavoidable.
6. The Officers' report does refer to the Planning Statement submitted although no reference has been made to the Sun Path Study complete for the site. Whilst background papers may not always be directly specified within the Officers report, the Council explain that the extension would overshadow the private garden area of No. 39 for a significant proportion of the day. This does not however appear to factor in the impact of the already approved extension which is a material consideration in this case. It shall be seen from my decision upon the planning appeal that is the subject of this application, that the Sun Path Study clearly shows the difference between the approved and proposed scheme which sufficiently demonstrates that there will be very limited impact arising from the change proposed as part of this appeal. I am not therefore sufficiently convinced that the Sun Path Study was given due consideration in this regard.
7. It is not unreasonable for the Council to raise concerns about daylight/sunlight matters which informed its decision given the close proximity of the extension to its neighbour. However, the Council's Officer's report fails to provide justification for this particularly taking into account the overall findings of the study. No technical or other critique has been made of the submitted assessment to support their concerns and inaccurate assertions about the proposals impact were therefore made. I am satisfied that this matter has unnecessarily increased the expense associated with the appeal and a partial award of costs is therefore justified on this basis.
8. It is not unreasonable for the Council to progress the application without receiving feedback from consultees such as highways etc as it is indeed the Councils' discretion if non-statutory consultees are required to be consulted. In this case, it was considered that consultee comments were not required given the history at the site whereby previous advice has been supplied in relation to the applicants' intentions albeit that it may not have been as part of the current scheme but that of a similar nature.
9. Nevertheless, it is clear that the as proposed parking detail plan under reference 01 C does reflect the parking arrangements which has already been approved for the site and thus would not give rise to any additional impact. Whilst there is a discrepancy on the submitted plans in terms of parking positioning, this could have easily been clarified not only to ensure the refusal related to the correct parking arrangements as proposed given the

inconsistency, but also to ensure the parking positioning remains closer to the front of No 37 opposed to along the shared access. Notwithstanding, this could indeed be covered via an appropriately worded planning condition along with details relating to the laying out of such areas. The Council has therefore failed to determine similar cases in a consistent manner in this respect whilst also refusing planning permission on a planning ground capable of being dealt with by conditions. I am satisfied that this matter has unnecessarily increased the expense associated with the appeal and a partial award of costs is therefore justified on this basis.

10. I am aware of the applicants' concern regarding the Councils' lack of contact and whilst it would have been useful for the Council to have clarified matters relating to the parking arrangements given the inconsistency, there is also a responsibility for the applicant to ensure the plans are correct and conform with each other and that the Council has all of the information they need to make a decision. This does not however alter my findings that the parking provision has previously been approved and should have been assessed accordingly.
11. Certain documents that formed part of the planning application namely, the Sun Path Study and Planning Statement were not provided by the Council as part of the planning appeal but later provided by the applicant. However, the Procedural Guide¹ does also require the appellant to submit amongst others, a copy of the planning application and any other essential supporting documents. To my mind, the procedural guide also places an onus on the applicant to supply such essential supporting documents. The late receipt of documents did not prejudice the applicant's case as such matters were indeed taken into account at the time of my site visit and in making my decision. To this end, and as will be seen from my decision, I do not find harm in relation to sunlight/daylight matters and a partial award of costs is also allowed in respect of this matter and others given my findings above but ultimately, I find that an appeal was unavoidable in the particular circumstances of this case.
12. Bringing everything together, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to matters concerning daylight/sunlight and access/parking and that a partial award of costs is justified.

Costs Order

13. 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 Leeds City Council shall pay to Mr D Watson the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred connected with matters related to daylight/sunlight and access/parking, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Leeds City 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.

N Teasdale, INSPECTOR

¹ Procedural Guide: Planning Appeals – England Paragraph 9.4.2.1.