



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: 20 December 2024

Costs application in relation to Appeal Ref: APP/N4720/W/24/3345137 Cliff Tannery, 388 Meanwood Road, Meanwood, Leeds LS7 2JF

- 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 H Manton (HM Properties Ltd) for a full award of costs against Leeds City Council.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for change of use to form 9no. apartments.

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 PPG sets out what type of behaviour may give rise to a procedural award against a local planning authority which includes amongst others: lack of co-operation with the other party or parties; only supplying relevant information at appeal when it was previously requested, but not provided, at application stage; prolonging the proceedings by introducing a new reason for refusal¹.
4. The PPG also sets out what type of behaviour may give rise to a substantive award against a local planning authority which includes amongst others: failure to produce evidence to substantiate each reason for refusal on appeal; acting contrary to, or not following, well-established case law; refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal; refusing planning permission on a planning ground capable of being dealt with by

¹ Paragraph: 047 Reference ID: 16-047-20140306

conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead².

5. The applicant claims that there has been a lack of co-operation from the Council during the application process particularly in relation to its interpretation of the previous consent to adjoining land. This being that it had not granted planning permission for the residential parking and amenity area associated with the appeal site. It is claimed that reference to the John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (Uk) Limited Judgment was only put forward in the Officers' delegated report after refusing consent. This is said to be despite the applicant requesting a response on this beforehand, having also referred to other case law himself. It is the applicant's contention that there was ample time to provide a response on such matters given that he had agreed an extension of time. This was not provided, and so the applicant could only respond to the Judgment through the appeal process.
6. Whilst I appreciate the applicants' frustrations in this regard, communication did take place between the parties during the application process regarding the Council's overall procedural concerns associated with the application which ultimately led to the refusal. To this end, advice was offered as to the way the applicant should proceed from that point and an extension of time was given for the Council to consider case law. It may have been helpful for the Council to have referred to the Finney Judgment earlier in the process to allow the applicant time to respond. However, I do not find their approach to have been unreasonable in this regard given that discussions previously took place. It is also clear from the evidence before me that such matters would not have altered the Councils' overall position, and an appeal could not have been avoided or the issues narrowed on this matter, where a response would have been needed in any case.
7. It is claimed that the Council's Statement of Case appears to introduce a secondary point in relation to the reason for refusal regarding the ability of planning conditions or planning obligations to ensure the necessary car parking provision etc. It is however clear from the evidence before me that concerns were raised as part of the application process regarding the delivery of the schemes given their overall relationship to one another. Such matters are not therefore fresh and did not result in a new reason for refusal.
8. The Council considers the Finney Judgment to be the legal precedent applicable in this case. The Judgment relates to the scope of a Section 73 application which is different to the appeal scheme. Notwithstanding my findings on this, as set out in my main appeal, I do not find its reference to be totally misplaced in the particular circumstances of this case given that the original description of the development specifies the use of the land. The Council's case is clearly set out within its Officer Report and despite not providing a direct response to the applicant's arguments on the relevance of Finney and other case law, I do not find this to amount to unreasonable behaviour or that the Council has failed to sustain its reason for refusal in this regard. The lack of response on such matters does not mean that it has not been considered and I am aware that the Council's legal team were indeed consulted but the information did not alter its overall stance.

² Paragraph: 049 Reference ID: 16-049-20140306

9. The case law referred to would not add up to an incontrovertible steer given the differences in the cases and their complexity. I cannot therefore agree that the Council has acted contrary to, or not followed, well-established case law. What is however clear, as discussed in my main appeal is that the occupation of the appeal scheme can be prevented until the areas for access, parking, and amenity associated with the extant planning permission on the adjacent land, under reference 22/05656/FU, have been provided pursuant to those details. I have set out that this would be secured through the appellant's Unilateral Undertaking. On this basis, the proposed development can deliver a suitable means of access/parking.
10. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO is subject to the standard conditions set out in paragraph MA.2. For Class MA cases, Paragraph W applies which allows decision makers to "*grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval*".
11. Given my findings in the main appeal, the delivery of the access, parking and amenity areas forming part of the extant permission could have been secured via negatively worded planning conditions or a planning obligation preventing the occupation of the residential units until they had been made available for their use. Such would have reasonably related to the subject matter of the prior approval and there is no compelling case that would prevent the imposition of a negatively worded condition in this case. On this basis, I find that the Council has refused planning permission on a planning ground capable of being dealt with by conditions.
12. Bringing everything together, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full 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 H Manton (HM Properties Ltd) the costs of the appeal proceedings described in the heading of this decision; 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