



Costs Decisions

Site visit made on 15 April 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 August 2025

Costs application in relation to Appeal A Ref: APP/A1910/X/24/3338702

1 The Orchard, Kings Langley WD4 8JR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Ben Sterling of Kedgling Developments Ltd for a full award of costs against Dacorum Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development for insertion of two doors and internal layout changes.

Costs application in relation to Appeal B Ref: APP/A1910/W/23/3326421

1 The Orchard, Kings Langley WD4 8JR

- 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 Ben Sterling of Kedgling Developments Ltd for a full award of costs against Dacorum Borough Council.
- The appeal was against the refusal of planning permission for extension of existing dwelling to split into 4 dwellings.

Costs application in relation to Appeal C Ref: APP/A1910/W/24/3342737

1 The Orchard, Kings Langley WD4 8JR

- 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 Ben Sterling of Kedgling Developments Ltd for a full award of costs against Dacorum Borough Council.
- The appeal was against the refusal of planning permission for insertion of two doors and converting existing dwelling into four dwellings.

Costs application in relation to Appeal D Ref: APP/A1910/W/24/3343237

1 The Orchard, Kings Langley WD4 8JR

- 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 Ben Sterling of Kedgling Developments Ltd for a full award of costs against Dacorum Borough Council.
- The appeal was against the refusal of planning permission for insertion of two doors and converting existing dwelling into five dwellings.

Costs application in relation to Appeal E Ref: APP/A1910/W/24/3349857

1 The Orchard, Kings Langley WD4 8JR

- 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 Ben Sterling of Kedgling Developments Ltd for a full award of costs against Dacorum Borough Council.
- The appeal was against the refusal of planning permission for conversion of existing dwelling into 3 dwellings with addition of a porch.

Decisions: Appeals A-E

1. The applications for an award of costs are refused.

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.
3. The word “unreasonable” is used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.

Appeal A:

4. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. The applicant raises a number of concerns relating to the Council’s reasons for refusing the application, including consistency with previous decisions. Their claim is therefore substantive in respect of Appeal A.
5. The applicant asserts that the Council approved an LDC application for additional doors at the property previously without any additional details and, in essence, raises concern in terms of the council’s consistency in dealing with this application.
6. Although the appeal did not turn on whether sufficient information had been submitted to show that the proposed works would comply with condition A.3(a) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended (the GPDO), the Council identified this as one of its reasons for refusing the application.
7. The Council does not dispute that a previous application, reference 21/04383/LDP, did not provide details of the materials to be used for doors and windows. While consistency in decision making is important, an application for an LDC must be considered in light of the facts and the law.
8. The PPG makes it clear that it is for the applicant to provide sufficient information to support an application. The absence of details regarding the doors meant that the Council was unable to determine whether the proposed works would have complied with condition A.3(a) of Part 1, Schedule 2 of the GPDO. Consequently, it was not unreasonable for to refuse the application on this basis.
9. Furthermore, the Council did not, in my view, need to go this far. As set out in my decision letter, the proposed works would not have been lawful because they would have failed to comply with a condition subject to which planning permission has been granted and the time for taking enforcement action in respect of the failure would not have then expired.
10. The applicant suggests that Article 3(4) of the GPDO does not apply to conditions imposed under applications 23/01321/NMA, 22/02398/ROC and 21/04141/NMA. However, section 96A of the Act, which gives local planning authorities the power to make non-material changes to a planning permission, confers on it the power to

impose new conditions or the remove or alter existing conditions, while section 73 gives local planning authorities the power to grant planning permission subject to conditions differing from those subject to which the previous permission was granted. I therefore see no reason why Article 3(4) would not apply¹. Given this, Article 3(4) meant the application could not succeed and so the Council was not unreasonable in citing it as a reason for refusing the application.

11. Similarly, Article 3(5) of the GPDO would also have meant that the property did not benefit from permitted development rights at the date the application was made. While works to the rear extension were not completed at the date of the application (and so could still have accorded with the plans condition once finished), it is the upward extension of the building which, at the date of the LDC application, was suggested by the Council to be in breach of planning control.
12. Where the operations involved in the construction of any part of a building are unlawful, Article 3(5) serves to disapply permitted development rights granted in respect of that building. The fact that the works were subsequently regularised would not have addressed this for the purposes of the LDC application, since the relevant date is the date of the application². The Council was therefore not unreasonable in citing this as one of its reasons for refusing the application.
13. The applicant suggests that, since there is no dispute that once the building works are completed, then the doors could be added under permitted development rights and that it is *Wednesbury* unreasonable³ to insist on an extension being built fully before permitted development rights apply. However, as set out in my decision letter, I have found that the proposed works would not be lawful and the applicant's argument in this regard has failed. It follows that the Council has not been unreasonable, either in the *Manchester* sense (as set out above) or the *Wednesbury* sense.
14. The applicant has drawn my attention to the Planning Practice Guidance which advises 'A lawful development certificate may be granted on the basis that there is an extant planning permission for the development; however, that development still needs to comply with any conditions or limitations imposed on the development by that grant of permission, except to the extent specifically described in the lawful development certificate.' This does not mean that the LDC process can be used to alter an existing planning permission, there are other provisions within the Act to do that. Section 191 of the Act sets out how lawfulness is to be determined for the purposes of determining a certificate of lawfulness. Planning merits are not relevant, and a planning permission cannot be 'altered' by a lawful development certificate.
15. As set out in my decision letter, I have found that the Council's decision to refuse the certificate of lawfulness is well-founded. It follows that the Council was not unreasonable in refusing the application. The appeal would still have been necessary and so the applicant has not incurred wasted expenses in appealing it.

¹ *Dunnett Investments Ltd v SoS* [2017] EWCA Civ 192 concerned the wording of a condition and so does not assist in this case.

² Section 192(2) of the Act provides that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

³ Where a decision maker takes a decision that was so unreasonable that no reasonable authority would ever consider taking it.

16. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of Appeal A.

Appeal B

17. The main thrust of the applicant's costs claim is that the Council did not give sufficient consideration to the fallback position, i.e., works that could be done under permitted development or under existing planning consents and that the Council's conclusions in respect of parking are wrong. The applicant's claim in respect of Appeal B is therefore substantive.
18. The applicant suggests the Council are 'pretending' that the building works have not been carried out and refers to a Freedom of Information (FOI) request, where the planning officer is stated to have told the neighbour at 3 The Orchard back in 2018 that they (the applicant) would end up building permitted development extension.
19. As set out in my appeal decision, works to the building were underway at the time of my visit. From the evidence provided, it appears that such works had been commenced by the date the application was determined. However, the proposal includes the subdivision of the property into 4 dwellings, which would not be permitted by the extant permissions. The Council has set out within its decision notice and officer report why it refused the application.
20. The applicant suggests that the planning officer had not visited the site, meaning that their assessment was based upon a hypothetical interpretation. However, it is clear from the evidence that the site has been visited at various times by officers of the Council. It is clear that the Council had taken into account the implementation of extant planning permissions and utilisation of permitted development rights when drawing its conclusions.
21. The weight to be given to a fallback position is a matter for the decision maker. This is clearly an evolving site, with a complex planning history and, whilst I have disagreed with the Council in respect of the effect of the appeal scheme on Church House and the Kings Langley Conservation Area, I do not consider it was unreasonable in exercising its judgement in this way, particularly in light of appeal decision APP/A1910/W/22/3298236.
22. The applicant suggests it is irrational to claim that the parking in the proposal is cramped and out of keeping when it is asserted to be a significantly lower percentage than the prevailing area. However, this relates to the planning merits of the scheme. Although I have found that the proposed parking is not harmful to the character and appearance of the area, I do not consider the Council was unreasonable in drawing this conclusion, particularly since it accords with the conclusions of a previous appeal decision⁴.
23. It is suggested that there was no mention of public green space. However, the Council clearly set out its concerns with respect to the provision of private amenity space in its decision notice and within its officer report. It was clearly aware of arguments regarding the availability of recreational space at Green Park, referencing points made in response by members of the public at Appendix A of the report. Furthermore, as set out in my decision letter, I have concluded the proposed

⁴ APP/A1910/W/22/3298236

dwellings would not provide satisfactory living conditions for future occupants with respect to the provision of private outdoor amenity space.

24. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of Appeal B.

Appeals C and D

25. The PPG advises that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. The applicant states that the Council failed to meet the timetable for providing their questionnaire and supporting documents. The Start Letter set out the timetable for appeals C and D, which identified that the Council must send a copy of the appeal questionnaire and supporting documents by 15 May 2024. While the questionnaire was completed on 7 June 2024, the applicant has not explained how this has caused them to incur wasted expense through the appeal.
26. While the Council did not provide a statement of case for appeals C and D, it has provided its officer reports, which sets out its consideration of the proposals and its reasons for refusing the applications. The Council has not sought to provide a statement of case outside the timescales set out by the Planning Inspectorate and so I consider it has not been unreasonable in this regard.
27. The applicant has also raised substantive matters, similar to Appeal B, that the Council did not give sufficient consideration to the fallback position, i.e., works that could be done under permitted development or under existing planning consents and that the Council's conclusions in respect of parking are wrong.
28. The Council has set out its reasons for refusing the applications in its decision notices and has provided further reasoning within its delegated reports. As set out in my decision letter, I share the Council's concerns regarding the provision of outdoor amenity space. While the garden has already been subdivided, as set out in my decision letter, it has not been shown that the subdivision was lawful, or that the subdivision would be retained in the event the appeal fails.
29. With respect to Appeal D, the applicant raises concern with the Council's suggestion that no amenity space would be provided for the first and second floor units, whereas the design and access statement states it would provide amenity space for all dwellings, either private for each or some communal space. While the applicant has shown that private amenity space could be achieved for each of the dwellings, I have agreed with the Council that it has not been demonstrated that the appeal scheme would provide a satisfactory level of amenity for future occupants, with respect to outdoor amenity space.
30. Even if I were to find the Council was unreasonable in its assessment of amenity space with respect to Appeal D, the applicant would still need to address this matter through the appeal. Consequently, the applicant has not incurred wasted expense.
31. The applicant raises concerns regarding the Council's reference to 'significant intensification in the use of the site' given this was not raised as a ground for refusal either by the Council or previous Inspectors. However, as pointed out by the Council, it has previously raised this as a concern. As set out in my decision letter,

while I have agreed that the comings and goings are unlikely to significantly harm the character and appearance of the area, I have found that the subdivision of the amenity space would harm the character and appearance of the area.

32. The applicant suggests that the planning officer did not visit the site prior to making their recommendation. However, the Council advise that the conditions within the garden were evident from the site visit and has provided a photograph taken from the public domain. Significantly, as set out in my decision letter, I have agreed with the Council that the proposed rear garden would not provide satisfactory outdoor amenity space.
33. The applicant suggests the Council has been inconsistent in its interpretation of 'in close proximity' with respect to public open space. However, it is clear from the Council's delegated report that the Council has considered the quality of the amenity space proposed, which is site specific. As set out in my decision letter, I have agreed with the Council that the appeal scheme would not provide satisfactory living conditions by virtue of the outdoor amenity space proposed and so it follows that I do not consider the Council has been unreasonable in this regard.
34. The applicant points out that the Inspector in respect of APP/A1910/W/22/3298236 confirmed the suitability of the proposed amenity space for Dwellings A and B. However, this conclusion was drawn on the basis that a 2m high fence and a hedge would provide appropriate levels of privacy for future occupants. In this case, the applicant proposes no change to the current boundary treatment, with the brick wall to be retained, with a hedge. The Council has considered the proposal on this basis and I see no flaw in this regard.
35. The applicant suggests that the findings of appeal APP/A1910/W/23/333354 should have resulted in the Council removing its objection regarding the Special Area of Conservation (SAC). However, as set out in my decision letter, I have agreed with the Council that it has not been demonstrated that the proposed development will not adversely affect the integrity of the Chilterns Beechwoods Special Area of Conservation and so it follows that I do not believe the Council has been unreasonable in refusing it on this basis.
36. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of Appeals C and D.

Appeal E

37. The applicant raises concerns that the application was dealt with by an officer who had not previously been involved in the site and has drawn my attention to a number of errors contained within the Council's delegated report, as well as the suggestion by the officer that it is not essential for me to enter the site to assess the impact of the proposal during the appeal. The Council set out its reasons for refusing the application in its decision letter and set out its assessment within its delegated report.
38. The Council acknowledges that the Officer's report contains errors within the paragraph titled 'impact on the character and appearance of the area' which refer to the development for four dwellings instead of three, and four rooflights instead of eight. However, it is suggested that these errors do not undermine the assessment

of the proposal as a whole. Significantly, as set out in my decision letter, I have agreed with the Council in terms of the different harms and concluded that the appeal should be dismissed. It follows that I do not consider the Council has behaved unreasonably in refusing the application, or in defending the appeal.

39. The applicant raises concern regarding the Council's account of the Highway Authority's response. However, it is not unusual for such reports to summarise comments made by consultees. The Council has provided an extract of the response within an appendix attached to the report and, as pointed out by the Council, since there were other reasons for refusal, requesting further information is unlikely to have resulted in a favourable outcome.
40. Similar concerns to those raised in respect of appeals B, C and D above have also been raised in respect of fallback and SAC mitigation. However, I see no reason to draw different conclusions in respect of this costs application.
41. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of Appeal E.

Conclusions

42. Thus, for the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Savage

INSPECTOR