
Costs Decision

Site visit made on 7 November 2016

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 November 2016

Costs application in relation to Appeal Ref: APP/G5180/D/16/3155890 Elm Cottage, 27 Croydon Road, Keston, Kent BR2 6EA

- 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 Messrs Charles Howard and Lucas Steadman for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for a two-storey rear extension, increase in roof height to provide habitable accommodation within roof space, enlarged front entrance porch/lobby together with elevational alterations and demolition of the existing derelict garage.
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Decision

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

Procedural matter

2. An e-mail to the Planning Inspectorate on 15 August confirmed that the applicants' names are those that I have used in the banner heading above.

Reasons

3. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, an award of 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. Applications for costs can be progressed on procedural grounds, relating to the appeal process itself; or substantive grounds relating to the planning merits of the appeal. In this case the applicant alleges that the Council has not determined similar cases in a consistent manner, a substantive ground.
4. Prior to the submission of the planning application that led to this appeal, the Council refused an application¹ for a more substantial set of alterations at the same site. This previous proposal included substantially proportioned windows at first floor level on its rear elevation. The Council, in refusing this previous application, made no reference to the effects of these windows on the privacy of the occupiers of adjacent property in its decision notice, which gave two reasons for refusal; one concerning the proposal's effects on the character and appearance of the conservation area; and the other its failure to secure adequate separation distance from neighbouring dwellings.

¹ Council reference: DC/15/05429/FULL6

5. The appeal scheme to which this costs decision relates made revisions to the previous proposals to address the Council's concerns as they related to separation distance and the conservation area. The rear elevation of the appeal scheme would not have the same width as that envisaged in the previously refused scheme; and it would not extend to the same depth into the rear garden. As a result, the rear windows at first floor would be neither as extensive, nor as close to 46 Forest Ridge as the fenestration in that previously refused scheme. However, whilst the officer report on the planning application for the appeal scheme recommended approval, the Council's planning committee refused permission based on a single reason for refusal focussing on the effects of the proposed development on the privacy of the occupiers of 46 Forest Ridge.
6. Whilst it is not unreasonable for a council committee to go against the recommendations of its officers when it makes planning decisions, it must do so on reasonable planning grounds, with clear evidence to substantiate its reasoning. In the current case, the proposed development included a reduction in the amount of glazing at first floor within a rear elevation located at a greater separation distance from No 46 than that previously refused scheme. I have been supplied with no substantive evidence to suggest that any planning policies or other material considerations have changed between the determination of the first application and the one that led to the appeal. Consequently, against this background, through introducing this reason for refusal in respect of the appeal scheme the Council demonstrably failed to determine similar cases in a consistent manner, and thus behaved unreasonably in this regard.
7. Consequently, I find that the Council has behaved unreasonably and that this has resulted in unnecessary expense on behalf of the applicants in progressing the appeal. Accordingly, this application for costs succeeds.

Costs Order

8. 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 the Council of the London Borough of Bromley shall pay to Messrs Charles Howard and Lucas Steadman, 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.
9. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

G J Fort

INSPECTOR