
Costs Decision

Site visit made on 18 October 2016

by Nicola Davies BA DipTP MRTPI

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

Decision date: 25TH November 2016

Costs application in relation to Appeal Ref: APP/G5180/W/16/3153818 25 Samos Road, Penge, London SE20 7UQ

- 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 Alex Deusch of Concrete Investment LTD 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 ground floor rear extension, part first floor rear extension, provision of dormer windows within rear roof slope and conversion into 5no self-contained flats of use class C3.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, costs may only 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 Council's officer recommended the scheme, but members turned it down. It is of course open to Council members to come to a different conclusion to their officers, but the Council must give adequate reasons for its decision. In this case the Council did not adequately substantiate reason for refusal 1 that the extension would have a seriously detrimental impact on the distinctive character and visual amenities of the area. It did not provide any cogent evidence or explain how it reached its conclusion on the matter. This was unreasonable behaviour and the appellant incurred the unnecessary cost of going to appeal.
 4. Furthermore, the Council has subsequently approved a scheme at the appeal site similar in nature to the appeal proposal (ref reference DC/16/03518/FULL1). This subsequent planning permission differs from the appeal proposal in that it would comprise 4 flats without extending at first floor to the rear. The Council has accepted that any issues of relationship between living rooms at No.25 Samos Road and bedrooms in No.27 Samos Road can be overcome by the imposition of a soundproofing condition. The internal arrangements at first floor are not markedly different to that of the approved scheme. The Council did not provide any reasonable argument that demonstrates the appeal proposal to have a more significant effect on living conditions than that of the approved scheme, or that the imposition of a soundproofing condition could not mitigate the impact. This was unreasonable
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behaviour and the appellant incurred the unnecessary cost of the appeal procedure.

5. It is also contended that the Council has failed to address the possibility that a first floor rear extension the same as that proposed could be built under General Permitted Development Order if the building were to remain a single dwelling. Whether or not any part of the proposal might be capable of being built as permitted development, the application must be considered as a whole. However, that does not alter my conclusions in respect of the costs application.
6. I therefore find that unreasonable behaviour resulting in unnecessary expense has been demonstrated in part and that a full award of costs is justified.

Costs Order

7. 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 London Borough of Bromley shall pay to Concrete Investment Ltd, the costs of the appeal proceedings in respect of those matters outlined above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to 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.

Nicola Davies

INSPECTOR