
Costs Decision

Site visit made on 8 November 2016

by J Flack BA Solicitor

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

Decision date: 30 November 2016

Costs application in relation to Appeal Ref: APP/G5180/W/16/3155694 72 Hayes Lane, Beckenham, Kent BR3 6RW

- 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 R Rostant 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 erection of detached bungalow; closure of existing vehicular access to garage and formation of new vehicular access; demolition of existing garage/store; provision of bin and cycle store and detached shed.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Government's Planning Practice Guidance (the Guidance) 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 Council suggests that the application is for a partial award of costs, on the basis that it relates mainly to only one of the Council's reasons for refusing the application. However, it seems to me that the appellant's application mentions some matters which relates to the other refusal reasons, and I have therefore treated the application as being for a full award of costs.
4. The appellant considers that the third refusal reason was unreasonably imposed and pursued by the Council. It is true that the Council's officer's report, and subsequently its statement at appeal, mistakenly refer to the proposal as a three bedroom dwelling; it would instead be a two bedroom dwelling. However, it is also abundantly clear that the Council's concerns relating to amenity space did not arise from the quantity to be provided or the compliance of the proposal with relevant policy standards in that respect. I thus do not see that there has been a need for the appellant to investigate that matter. The Council's concerns instead arise solely from the quality of the amenity space. In that context it seems to me immaterial whether the proposed dwelling has two or three bedrooms, and in my decision on the appeal I have found that the Council's concerns were justified.
5. A further criticism of the Council made by the appellant is an assertion that it misdirected itself by applying UDP Policy H9 to a single storey proposal.

Criterion (i) of the Policy requires a side space of at least a metre between the side wall of a proposal and its boundary, but it applies only to proposals of two or more storeys and is therefore irrelevant to the appeal proposal. However, criterion (ii), as I read it, applies to all proposals and requires a more generous side space where higher standards of separation already exist within residential areas, the Policy justification at paragraph 4.48 explaining that this is necessary to prevent a cramped appearance and protect high spatial standards which characterise many of the borough's residential areas. This is true of the appeal site's context, as the Council states in its officer's report. I consider therefore that the Council were justified in citing this Policy and relying on breach of it.

6. The appellant also criticises the Council for ignoring the development it has permitted at 1 and 3 Top Park and claiming in its officer's report that further development within the ASRC is precluded. The officer's report does not mention the Top Park decision, but that does not of itself demonstrate that the Council ignored it in taking its decision. Even if it had, for the reasons set out in my appeal decision, the circumstances of that decision were appreciably different to those of the appeal proposal. I am thus wholly unconvinced by the appellant's assertion that if officers had been aware of the Top Park decision, the Council would have reached a different conclusion on the principle of residential development at the appeal site. Moreover, whilst it is true that Policy H10 seeks to control, rather than wholly preclude, further development within ASRCs, the officer's report adequately explains why the development proposed at appeal would not comply with the Policy and be harmful to the ASRC.
7. In my view, the appellant's criticisms of the Council demonstrate, at most, unfortunate but ultimately minor errors which do not materially undermine what I have concluded to be a robust and soundly based refusal of the appeal proposal. The Guidance states that there should generally be no grounds for an award of costs against a local planning authority where it has refused a planning application for a proposal that is not in accordance with development plan policy, and no material considerations including national policy indicate that planning permission should have been granted. For the reasons set out in my appeal decision, that is the case here.
8. For the above reasons, I conclude that unreasonable behaviour leading to unnecessary or wasted costs in the appeal process has not been demonstrated. The application for an award of costs is therefore refused.

J Flack

INSPECTOR