
Costs Decision

Site visit made on 5 December 2016

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 3rd January 2017

Costs application in relation to Appeal Ref: APP/G5180/D/16/3158016 45 Sandy Ridge, Chislehurst BR7 5DP

- 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 David Markham 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 part one/two storey side/rear extension, roof alterations to include increase in ridge height, alterations to the pitch and installation of Velux Cabrio rooflight to the rear roofslope.
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Decision

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

Procedural Matter

2. I have used the more succinct description of the development provided in the Council's Decision Notice in the interests of clarity.

Reasons

3. Paragraph 030 of the National Planning Practice Guidance (the NPPG) advises that 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.
 4. The NPPG at paragraph 049 states 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. This includes, for example, if they prevent or delay development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. It also includes where vague, generalised or inaccurate assertions about a proposals impact are made which are unsupported by objective analysis.
 5. The appellant has applied for costs to be awarded in this case due to aspects of substantive concern which relate to the two examples of unreasonable behaviour set out in the previous paragraph. I will deal with each of these concerns in turn.
 6. Firstly, the appellant states that the appeal proposal sought to address the reasons for refusal given by the Council in relation to an earlier proposal for this site. In this respect both the pre-application advice and the Council's Officer
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Report indicated that this scheme was acceptable. However, informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take into account all relevant factors. Furthermore, evidence of this advice has not been presented to me so I have no firm basis on which to conclude that this advice was so misleading as to amount to unreasonable behaviour on the part of the Council.

7. I have noted that this proposal was recommended for approval to the Planning Committee. However decisions in cases such as this are a matter of judgement, and Council Members are not bound by officer recommendations. They are required to take into account all relevant material considerations, including the views of local residents, which were clearly influential in this case. As can be seen from my decision in this case, I do not agree with Council Members that there were sufficient grounds for refusing planning permission. However, decisions in such cases are finely balanced and in reaching a different conclusion I do not consider that the Council acted unreasonably.
8. Secondly, the appellant states that the reasons for refusal are not supported by any technical appraisal or reasoned argument. As I identified in my decision in this case, the reason for refusal has two elements: the effect of the proposal on the character and appearance of the area, and on the living conditions of the occupiers of the neighbouring property.
9. Looking at the first of these, the Officer Report refers to the effect of the proposal on the street scene in terms of its bulk, the improvements which have been made in comparison with the previous application, and in relation to the alterations which have been made to other dwellings. Whilst it is felt that on balance the harm to the character and appearance of this area would not be significant, the elements of concern are identified and subsequently summarised in the reason for refusal. In this respect the Councils case is not unreasonable.
10. The second part of the reason for refusal relates to the adverse impact of the proposal on the living conditions of the occupiers of No 47 Sandy Ridge. The Officer Report highlights various aspects of potential impacts which, on balance, it concludes are acceptable. This type of appraisal is finely balanced, and in coming to a different view Council Members were clearly persuaded that the occupiers of this property would suffer harm. The Decision Notice limits the extent of concern to the residential amenity of the occupants of No 47. Whilst the Council did not present a detailed appraisal of the harm which would be caused, the nature of possible impacts are referred to in the Officer Report. Therefore in this respect the Council has not acted unreasonably.

Conclusion

11. I have found that the Council did not act unreasonably in coming to a different conclusion than that presented in its Officer Report. I have also found that the reasons for refusal are clearly set out.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has not been demonstrated.

AJ Mageean

INSPECTOR