
Costs Decision

Site visit made on 16 January 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 9 February 2017

Costs application in relation to Appeal Ref: APP/G5180/W/16/3163116 Lillys Farm, Chelsfield Lane, Orpington BR6 6EP

- 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 T Pitham (T Pitham Business 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 the change of use and demolition of existing commercial buildings and erection of 3 x four-bedroom houses, garage for plot 3, associated access road and parking without compliance with condition No 11 previously imposed on planning permission Ref DC/15/010254/FULL2 dated 4 April 2016.
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Decision

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

Reasons

2. 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 PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal; make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; 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; acting contrary to, or not following, well-established case law.
 4. The basis of the appellant's application for costs is on the grounds that the Council acted unreasonably during the determination of the planning application by failing to give proper consideration of Green Belt Policy and without correct consideration of the potential visual impact of the proposed development within the Conservation Area setting. The appellant also contends that the Council failed to give appropriate weight to Saved Policy G1 of the Bromley Unitary Development Plan (UDP). As a consequence of the unreasonable behaviour of the Council, and a lack of any evidence on which to substantiate the reasons for refusal, an appeal was necessary.
 5. The application subject to this appeal was made under Section 73 of the Planning Act for minor material amendments. It sought revised, but not substantially different designs to the three dwellings approved on 4 April 2016
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(Ref DC/15/010254/FULL2) by the provision of basements. That permission was granted following an appeal against the decision of the Council to refuse to grant planning permission (Ref APP/G5180/W/15/3136998). The appeal to which this application for a award of costs relates seeks the removal of condition No 11 imposed on the 2016 planning permission and its replacement with a condition specifying the plans that reflect the amended designs which include basements.

6. The Council's single reason for the refusal of planning permission comprised of two components. The first suggested that the intensification of the previously permitted development by reason of increased floor space would constitute inappropriate development in the Green Belt resulting in harm to openness and identified that as such the proposal would be contrary to Saved Policy G1 of the UDP and Policy 7.16 of the London Plan. The second component identified that the proposal would fail to preserve or enhance the character or appearance of the Conservation Area and as such would be contrary to Saved Policy BE11 of the UDP.
7. With regard to the first component, in the consideration of the previous appeal (Ref APP/G5180/W/15/3136998) the Inspector considered the appropriateness of the proposed three dwellings in the Green Belt in his decision dated 4 April 2016. He concluded that the proposed development would not be inappropriate development within the Green Belt as the proposal would represent the redevelopment of a previously developed land; would not harm openness or be contrary to the purposes of the Green Belt as identified in the National Planning Policy Framework (the Framework). Therefore, the principle of the appropriateness of the redevelopment of the site with three detached dwellings has been firmly established.
8. There has been no change in the planning circumstances of site since the previous appeal that would result in any alteration to the view that the appeal site constitutes a previously developed site within the Green Belt. The application clearly states that basements would be used for domestic storage and constructed wholly below ground with no visible external openings. As such there would be no change in the external appearance of the proposed dwellings from that shown in the original permission.
9. The Council's statement of case does not specifically identify or substantiate why the provision of below ground basements, that would be used for storage and would not be visible, would constitute inappropriate development, particularly against a background of the appropriateness of the redevelopment of the site for three dwellings being previously and firmly established.
10. In addition, little evidence has been provided by the Council to support the contention that the addition of basements would constitute an intensification of the previously permitted development to the extent that it would constitute inappropriate development. In particular, the ground area that would be occupied by the proposed development remains unchanged from the previous permitted development and the proposed developed floor area of the three dwellings with basements would not exceed that of the buildings associated with the existing use.
11. The Council also sought to rely on Saved Policy G1 of the UDP. The Inspector in the previous appeal clearly identified that this policy was not consistent with the sixth exception of paragraph 89 of the National Planning Policy Framework

(the Framework) and therefore should be afforded very limited weight. In arriving at this view the Inspector took into account the outcome of a High Court Judgement [2016] EWHC 595 (Admin) which also identified that Policy G1 of the UDP was inconsistent with the Framework.

12. In not substantiating how the proposed basements would constitute inappropriate development within the Green Belt and by seeking to rely on a policy that had been established in case law to be inconsistent with the Framework, I can see no reasonable justification for the Council's view that the modification of condition No 11 of the original permission by the inclusion of additional plans to enable the construction of basements to each of the three dwellings would constitute inappropriate development within the Green Belt.
13. The Council also identified that the proposed provision of the basements would harm the openness of the Green Belt and suggest that the site would be more intensively used for residential purposes and have the potential to increase the amount of paraphernalia associated with the development. The Council suggests that these factors would serve to undermine the openness of the Green Belt.
14. The Council's statement does not explain or substantiate how the proposed basements, would result in an increase in paraphernalia of an extent to cause demonstrable harm to the openness of the Green Belt. I consider that the Council's view regarding the effect of the basements on the openness of the Green Belt constitutes a vague and generalised assertion regarding the proposal's impact, which is unsupported by any objective analysis.
15. The second component of the reason for refusal of planning permission suggests that the provision of the basements would result in a more intensive form of residential development with an increase in residential activity and associated paraphernalia. The combination of these factors would have the consequence that the proposal would fail to preserve the character or appearance of the Conservation Area.
16. The proposed basements would be below ground with no visible external openings. The appearance of the three dwellings would be unchanged from that of the original permission. As such, the proposed physical development would not result in any visible change to the appearance of the dwellings from that which was considered to be acceptable in the previous appeal decision.
17. In this context, little evidence has been provided by the Council to support the second component of the reason for refusal and the specific harm to the character or appearance of the Conservation Area has not been identified. Taking these factors into account, I can see no reasonable justification for the second component of the Council's reason for refusal.
18. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should have reasonably been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG and consequently the appellant has been faced with the unnecessary expense of lodging the appeal.

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

20. 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 Mr T Pitham (T Pitham Business Ltd) the costs of the appeal proceedings described in the heading of this decision.
21. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Normington

INSPECTOR