
Costs Decision

Site visit made on 14 February 2017

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 29th March 2017

Costs application in relation to Appeal Ref: APP/G5180/W/16/3163625 8 Stephen Close, Orpington BR6 9TZ

- 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 & Mrs Huang for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for two storey rear, first floor side with part front extensions and garage conversion.
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Decision

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

Reasons

2. The National Planning Practice Guidance (the NPPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may relate to aspects of the appeal procedures or be substantive in nature, relating to the merits of the appeal.
 3. Paragraph 049 of the NPPG states that examples of unreasonable behaviour by local planning authorities with respect to the substance of the matter under appeal include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where vague, generalised or inaccurate assertions are made about a proposal's impact, which are unsubstantiated by objective analysis; not determining similar cases in a consistent manner; and persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
 4. Paragraph 047 of the NPPG states that examples of unreasonable behaviour by local planning authorities in relation to procedural matters at the appeal include: delays in providing information or other failure to adhere to deadlines and deliberately concealing relevant evidence at planning application stage or at subsequent appeal.
 5. The appellants have concerns in each of these regards, which I will address in turn below.
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6. As noted in my decision on this case, this is the second appeal relating to similar proposals for this site. The first application was refused on character and appearance grounds, noting specifically the failure to meet the local policy requirement for a 1m gap between the flank elevations of adjoining developments. Prior to the determination of this first application at appeal¹, the appellants submitted a revised application, which has been the subject of the present appeal, and which proposed reconstructing part of the existing building to provide the required 1m gap. Notwithstanding this revision, the application was refused due to its effect on the living conditions of the occupiers of No 9 Stephen Close.
7. It is clear that during the course of this application the appellants have sought to respond to the concerns of the Council and the objections made by occupiers of neighbouring properties. The plans on which this appeal was determined included further small revisions proposed whilst the application was being processed, and a Daylight and Sunlight report was produced, thereby demonstrating the appellants' actions in this regard. The appellants have clearly sought to respond to the provisions of the development plan and other material considerations in terms of the Council's and neighbours' objections. I have found in my decision on this case that the appellants' actions have been effective in addressing these matters.
8. The appellants also state that vague, generalised and inaccurate assertions were made about the proposal at the committee stage which was not supported by objective analysis. In this respect the committee considered the initial proposal and then further amendments on two separate occasions, at both times the proposals were recommended for approval by officers. It is clear that committee members were responding to the concerns of the occupiers of neighbouring properties, though on each occasion somewhat different objections were raised: the first relating to the perceived overdevelopment of the site and the second concerned with the impact on the occupiers of No 9. Whilst the resulting deemed reason for refusal identifies the nature and extent of the Council's objection, it is clear that the messages received by the appellants during this process have been somewhat confused and inconsistent.
9. The Council's Statement of Case describes the sequence of events leading to the present appeal, points to policy provisions and lists the points made in representations submitted by neighbours. It does not present an objective evaluation of the present proposal, including reference to the evidence presented by the appellants and analysis of the revisions which have been made to the earlier rejected scheme. As such, I agree that this is a further example of how the Council has presented vague, generalised and inaccurate assertions about the impact of the proposal.
10. The present appeal proposal has clearly sought to address the reason for refusal relating to the previous application. However, whilst the appellants have addressed the quite specific concern expressed by the Council in relation to the previous application, additional concerns were introduced in relation to this modified and more modest scheme. As such I accept that the Council has not determined similar cases in a consistent manner. Furthermore, the previous Inspector's decision, which addressed both the reason for refusal and

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the objections of neighbouring occupiers and found the scheme to be acceptable, was issued prior to the Council's indicative reason for refusal in this case. As the stated reason for refusal clearly conflicts with the findings of the previous Inspector, this is evidence that the Council has persisted in objections to a scheme which an Inspector has previously indicated to be acceptable.

11. Turning to procedural matters, there have clearly been problems with the information supplied by the Council both to the appellants regarding the appeal process in failure cases, and also to the Inspectorate to support the smooth running of the appeal procedure. As such I also accept that there is evidence of inaccuracy and delay in the provision of information at both planning application and appeal stages.
12. In summary, the present case was not determined during the prescribed period, even though the appellants were clearly pro-active in addressing new areas of concern. Furthermore the Council has persisted in presenting inaccurate and unsupported assertions about the impact of the proposal, notwithstanding the evidence to the contrary. The Council has also been responsible for procedural delays. This has led to an unnecessarily protracted and costly period of uncertainty for the appellants which could have been avoided.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the NPPG, has been demonstrated and that an award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Bromley shall pay to Mr & Mrs Huang, the costs of the appeal proceedings described in the heading of this decision.
15. The applicants are 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. In the event that the parties cannot agree on the amount, a copy of the guidance on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

AJ Mageean

INSPECTOR