
Costs Decision

Site visit made on 25 July 2017

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

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

Decision date: 22 August 2017

Costs application in relation to Appeal Ref: APP/D5120/W/17/3174210 270 - 274 Broadway, Bexleyheath DA6 8BE

- 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 Adam Martyn for a full award of costs against the Council of the London Borough of Bexley.
 - Second floor rear extension incorporating formation of roof terrace to provide 2 x 1 bed flats.
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Decision

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

Reasons

2. The 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 basis for the application is that the Council behaved unreasonably in not advising the applicant that the proposed development was to be refused under delegated powers, thereby denying the applicant the opportunity to withdraw or amend the proposals. The applicant states that as a consequence unnecessary or wasted expense was incurred in professional fees, including meetings and in the application fee. The PPG sets out that the parties in planning appeals normally meet their own expenses. Whilst the application fee is clearly not part of the appeal process, it is not clear to what extent other expenses formed part of the application process rather than the appeal process. Nevertheless, some expense in the appeal process is likely to have been incurred.
4. The application for costs relates primarily to the way in which the Council handled the planning application. The PPG indicates that although all parties are expected to behave reasonably throughout the planning process, and that behaviour and actions at the time of the planning application can be taken into account when considering costs claims, costs can only be awarded in relation to unnecessary or wasted expense during the appeal process.
5. The Council has provided copies of email correspondence. This shows that prior to the application being determined, the applicant's agent noted the day that determination of the proposal was due and sought comments in order to make revisions if necessary. The Council's response advised the applicant that a second visit to the site was not necessary and no further details or drawings

were required. Whilst the subsequent message from the appellant's agent could be interpreted as assuming the recommendation on the application would be positive, there is nothing in the Council's email which states that this would be the case. After the decision to refuse the application, the Council provided the applicant with an explanation regarding its approach to the determination.

6. The Council confirm that it is not obliged to notify an applicant of officer recommendations. The PPG indicates that where a more helpful approach would probably have resulted in an appeal being avoided altogether, this may lead to an award of costs against a planning authority.
7. Whilst I acknowledge the comments made by the application on how the Council processed the application these are not matters that directly affected the Council's formal decision on the application. Given the Council's objections to the scheme, which were based on judgements made upon the impact of the scheme on the host building and the character and appearance of the area, I find the Council did not act unreasonably in not seeking amendments to the scheme. Consequently, I find that the appeal could not have been avoided.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and thus an award of costs is not justified.

J E Tempest

INSPECTOR