
Costs Decision

Site visit made on 29 January 2018

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th May 2018

Costs application in relation to Appeal Ref: APP/G5180/W/17/3186752 61 The Avenue, Beckenham, BR3 5EE

- 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 Ron Terry (Howard : Faribairn : MHK) 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 demolition of the existing house and construction of 6 no. flats.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The PPG clarifies that unreasonable behaviour may either be procedural¹ or substantive². Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award³.
4. The application for costs by the appellant is based on substantive grounds in that it alleges the Council did not properly justify and evidence its decision that the development would result in overdevelopment of the site and fail to preserve the character and appearance of the Downs Hill Conservation Area.
5. Although the case officer recommended approval, Councillors are not obliged to follow the recommendations of officers on the provision that they give sound and justifiable reasons for doing so. Whilst I consider the wording of the reason for refusal to be clear and precise, the Council's appeal statement fails to sufficiently explain and evidence why the appeal proposal would result in overdevelopment of the site and fail to preserve the character and appearance of the Downs Hill Conservation Area, particularly given that it was the same size, proportion, mass and height above ground level as the recently permitted

¹ Paragraph: 047 Reference ID: 16-047-20140306, Revision date: 06 03 2014

² Paragraph: 049 Reference ID: 16-049-20140306, Revision date: 06 03 2014

³ Paragraph: 032 Reference ID: 16-032-20140306, Revision date: 06 03 2014

scheme for the provision of 2 large detached houses⁴. Consistency is an important consideration in planning decisions and the Council did not evidence any material change in circumstances that would warrant a different outcome.

6. I note the Council's assertion that the difference between the 2 schemes was so considerable as to require a separate planning application, but this was solely because the scheme was for flats and not because of any differences in the physical size, proportion, mass and height of the building.
7. Furthermore, whilst I recognise that the Council did assert that the new basements, lightwells and 2 additional balconies would contribute to a significant increase in the intensity of the site in a manner uncharacteristic of the Downs Hill Conservation Area⁵, in my opinion it failed to adequately explain or evidence what harm would actually arise from this, particularly given the fallback position of the recently permitted scheme.
8. To my mind, much of the Council's case as to why the proposal was unacceptable appeared to centre on the principle that an intensification of use from 2 dwellings to 6 flats was unacceptable given the prevailing typology of detached single-family houses in the conservation area and that the character of the use would as a consequence be harmful. However, this is not reflected in the wording of the reason for refusal and as a consequence, it is my view that:
- (a) the Council delayed development which clearly should have been permitted, having regard to the development plan, national policy and other material considerations; and (b) failed to substantiate the reason for refusal on appeal.
9. Furthermore, I also consider that a more thorough explanation should have been provided clarifying how the development gave rise to the harm identified so as to enable the reader to understand why the matter was determined in the way that it was. I therefore conclude that the assertion made in respect of harm to the conservation area and wider locale was vague and generalised and unsupported by any explanation of how this conclusion was reached.
10. Accordingly, I consider that the Council failed to properly evaluate the application and consider the merits of the scheme at Planning Committee, particularly in the light of the fallback position of the previously approved scheme, and therefore the appeal could have been avoided. Furthermore, the Council's reason for refusal did not raise reasonable concerns about the impact of the proposed development which justified its decision.

Conclusion

11. I have found that unreasonable behaviour by the Council resulting in unnecessary and wasted expense has been demonstrated. I therefore conclude that a full award of costs, to cover the expense incurred by the applicant in contesting this, is justified.

Costs Order

12. 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

⁴ Planning Permission 16/05164/FULL1 dated 8 March 2017.

⁵ Paragraph 6.6 of the appeal statement.

Council of the London Borough of Bromley shall pay to Mr Ron Terry (Howard : Faribairn : MHK), the costs of the appeal proceedings described in the heading of this decision.

13. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whose agents 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 note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Robert Fallon

INSPECTOR