The Planning Inspectorate

Costs Decision

Site visit made on 3 July 2019

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 22 August 2019

Costs application in relation to Appeal Ref: APP/G5180/W/19/3228223
47 Tubbenden Lane, Orpington BR6 9PW

- 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 Mrs Jas Rooprai 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 construction of a two-storey one bedroom end of terrace dwellinghouse.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The applicant considers that the Council has acted unreasonably in failing to justify the appeal and the reasons for refusal adequately. This is due to the withdrawal of the second reason and by introducing a new objection to the first reason.

4. In respect of the Council withdrawing the second reason relating to on-site car parking provision, the PPG advises that in these circumstances the Council may be at risk of costs for unreasonable behaviour. The Council's appeal statement confirms that they based this reason on incorrect advice from their highway officer. As a result of this, they chose not to contest the appeal on these grounds. It seems clear to me that the Council has included a reason for refusal in its decision which it has been unable to substantiate at appeal, and this does amount to unreasonable behaviour.

5. Concerning the Council's first reason, relating to the proposed dwelling by reason of its scale would result in the unacceptable sub-division of the existing plot and an incongruous addition to the street-scene, which would be significantly harmful to the character of the area, resulting in a cramped form of development, it is complete, precise, specific and relevant to the proposal. It is acknowledged that the officer report is somewhat brief in its assessment, however it plainly explains the associated concerns. The reason also clearly states the policies of the London Borough of Bromley Local Plan 2019 that the Council consider the proposal would be in conflict with. Furthermore, the

Council's appeal statement does not introduce a different justification for the reason, in particular as it is evident that sub-division has been part of the Council's concerns throughout.

6. It seems clear to me that the Council has not introduced a new objection and has not failed to produce evidence to substantiate this reason. As a result, it follows that I cannot agree that the Council has acted unreasonably in this regard.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part. This is regarding the second reason for refusal relating to the on-site car parking provision. However, I am satisfied that the Council has reasonably substantiated its first reason. I therefore conclude that the application for an award of costs should be partially allowed.

Costs Order

8. 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 to Mrs Jas Rooprai, the costs of the appeal proceedings limited to those costs incurred in respect of preparing for and responding to matters relating to the Council's second reason for refusal, i.e. on-site car parking provision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

9. Mrs Jas Rooprai is 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.

Andrew Bremford

INSPECTOR