



Costs Decision

Site visit made on 23 August 2019

by John D Allan BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th September 2019

Costs application in relation to Appeal Ref: APP/G5180/D/19/3232331 9 Princes Avenue, Petts Wood, Orpington, BR5 1QP

- 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 Du Plessis 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 demolition of detached garage at rear and erection of single-storey side and rear, and first floor rear extension.
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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 (the 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 Council's procedures for requesting planning applications to be 'called-in' by Councillors for determination at a planning committee meeting rather than for a decision to be made under officer's delegated powers is a matter for them. I recognise the applicant's frustration at apparently being unable to ascertain who exactly had 'called-in' the application, or for what reasons. However, that behaviour did not directly lead to any expense in the appeal process. Neither did the timing of the Council's request for an extension to determine the application beyond the statutory 8-week period.
 4. Planning decisions often turn on subjective judgements and opinions. It is not unusual for a Members of a Planning Committee to attach different weight to considerations that are material to a decision, and Members are not bound to accept an officer's recommendation. However, the PPG provides examples of the type of behaviour that may give rise to a substantive award against a local planning authority. Amongst those listed are the circumstances where assertions are made about a proposal's impact without any objective analysis 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.
 5. The officer's report clearly set out the background to the planning application. It included several references to the previous appeal decision and the Inspector's reasoning. It also drew a clear comparison between the previous appeal proposal and the revised proposal. It specifically stated that '*the appeal*
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Inspector found the impact of the single storey extensions on the street scene to be acceptable'. Despite this the application was refused planning permission on the basis that it would be 'out of character with the form and appearance of Princes Avenue'.

6. The minutes of the committee meeting do not demonstrate that the Members of the Planning Committee informed their alternative viewpoint based on any objective analysis of the proposal. There is no suggestion within the officer's report that the changes proposed to the permitted scheme were significant. There is no evidence that the Planning Committee formulated its decision based on any thorough assessment of the modifications to conclude that the scheme represented a material change in circumstances that would tip the balance from a development found to have no harmful impact upon the character or appearance of the Petts Wood Area of Special Residential Character, to one which would. Neither did the report present any conflicting arguments for or against the proposal, or suggest that matters were finely balanced. Although the reason for the refusal was clear in its stated objection and supported in that regard by relevant policies of the development plan, in light of the acceptability of the first scheme, I find the assertion of harm for the revised scheme to be vague and unsubstantiated by any credible evidence.
7. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 Mr Du Plessis, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant 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.

John D Allan

INSPECTOR