



Costs Decision

Site visit made on 22 January 2020

by M Seaton DipTP MRTPI

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

Decision date: 15 April 2020

Costs application in relation to Appeal Ref: APP/G5180/D/19/3239785 70 Kingswood Road, Penge, London, SE20 7BN

- 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 Ms Francesca Canty 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 a part one/two storey rear infill extension, rear rooflights, conversion of existing detached garage into a habitable granny annex block with building height increased, new wall at front boundary, replacement of the timber fence above rear garden walls and extend garden walls up to the top of the timber fence.
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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 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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council has acted unreasonably by refusing planning permission, as the reasoning, assessment, and decision is premised on a hypothetical assumption that the future use of the garage as residential accommodation could be severed from the occupation of the main dwelling to form a separate unit of accommodation. It is contended that this conclusion was reached despite the assurances of the applicant that this was not the case, and though an offer was made by the applicant to enter into either an appropriate Section 106 agreement or accept a condition restricting the future occupation of the accommodation. The applicant alleges that the failure by the Council to address the matters in dispute in this manner has therefore led to unnecessary delay and expense for the project.
4. In their reasoning of the planning application, the Council has clearly linked their assessment of the proposed development to the relevant policy within the London Borough of Bromley Local Plan 2019 and has drawn their conclusions against that policy. In this regard, I accept that I have ultimately reached a different overall conclusion to the Council on the potential acceptability of the proposed use of the garage in conjunction with the imposition of a planning condition seeking to control the nature of the future occupation, but that this

on its own does not necessarily indicate the Council to have behaved unreasonably.

5. Despite this, I do not find the Council's reasoning on the potential unenforceability of the use of a restrictive condition to have been properly substantiated. I accept that the physical location and accessibility of the rear garden via the side gate from Kingswood Road allows the possibility of a separate access, but have not accepted that the very close relationship between the unit and the rear of the main house and the absence of any separate demonstrable kitchen facilities supports the Council's conclusions on future occupation. Furthermore, there is no expansion on why the imposition of any condition restricting occupation would be unenforceable. It would be apparent on inspection of the premises once completed that the features and fixtures of the unit and appeal site would reveal how the unit was being occupied. On this basis, and from assessing the characteristics of occupation, it would be possible to draw the conclusion as to whether the unit is occupied on any more than an occasional basis as guest accommodation or as primary accommodation and enforce the condition accordingly if necessary.
6. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that this would warrant a full award of costs.

Costs Order

7. 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 Ms Francesca Canty the full costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. 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.

M Seaton

INSPECTOR