



Costs Decision

Site visit made on 23 October 2020

by Chris Couper BA (Hons) DiP TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12/11/2020

Costs application in relation to Appeal Ref: APP/G5180/W/20/3250961 1 Holmdene Close, Beckenham BR3 6QG

- 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 Freshford Developments Limited for a partial award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for a new two storey dwelling on land to the side of 1 Holmdene Close.
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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. At ID: 16-049-20140306 it provides examples of types of behaviour that may give rise to a substantive award of costs against a local planning authority.
3. Those behaviours include a lack of co-operation; unreasonably refusing an application having regard to its accordance with the development plan, national guidance and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The applicant alleges that the Council's second reason for refusal results from a misunderstanding of the proposal; is vague, unsubstantiated and not fully explained; and that it cites irrelevant policies. As a result, this has resulted in wasted expense re-surveying the site and instructing specialist transport consultants to respond.
5. For my part, I consider that as the cited policies require that consideration be given to the impact on road safety, and how any dis-benefits with regards matters such as congestion will be mitigated, they are relevant to the reason for refusal.
6. A positive and proactive approach would have been to highlight at application stage what the Council considered the inaccuracies in the submitted information to be. Nevertheless, whilst the Design and Access Statement and the application drawings state that the existing accesses would be unaltered,

and the officer report refers to their retention, drawing ref 1906-PL-900 Rev A submitted with the appeal did identify some discrepancies.

7. Although I have found that those discrepancies were very minor, as there were some differences, commissioning that additional work does not constitute a wasted expense, particularly as it would have been incurred even if the Council had requested it at application stage.
8. Turning to the alleged harm, I have found in my appeal decision that the traffic arising from a single two bedroom dwelling in this location would not result in 'significant congestion', or give rise to a significant impact on highway safety.
9. For its part, the Council states that the Planning Officer and the Highway Authority Officer both visited the site and accurately understood the plans. I have considered the Council's evidence including its decision, its officer report (including the sections headed 'Highways', 'Parking' and 'Conclusion'), the representation from the Highways Officer dated 25 October 2019, and the additional Highway's comments at Appendix 5 of the Council's letter dated 2 September 2020.
10. However, notwithstanding the minor discrepancy on the drawings, the Council has not provided any detailed evidence or objective analysis to support its assertion that the scheme would be likely to result in 'significant and unacceptable traffic congestion in the local road network'; or conditions detrimental to safety, let alone the significant adverse effect as set out in Bromley Local Plan 2019 Policy 32.
11. Finally, whilst the Council refers to its pre-application advice, that scheme involved a new access from Overbury Avenue and did not therefore address the access arrangements proposed in the appeal scheme.
12. For the above reasons, the Council's second reason for refusal does not stand up to scrutiny. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. A partial award of costs is therefore justified.

Costs Order

13. 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 Freshford Developments Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in making the costs application; and the commissioning of a Transport Consultant with associated evidence to rebut the Council's second reason for refusal. Such costs shall be assessed in the Senior Courts Costs Office if not agreed.
14. 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.

Chris Couper

INSPECTOR