



Costs Decision

Site visit made on 11 November 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2020

Costs application in relation to Appeal Ref: APP/G5180/W/19/3223615 Land at Gravel Pit Way, Orpington BR6 0QS

- 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 Barnfield Homes 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 existing double garage and workshop, erection of two/three storey apartment block comprising 6 x one bed flats and 1 x two bed flat and alterations of existing access.

Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant's claim is that the Council has behaved unreasonably particularly since notification of redetermination of the appeal through not reviewing their case following changed circumstances and unnecessarily prolonging dialogue. The changes relate to the Council's acceptance that they cannot demonstrate a 5 year supply of deliverable housing sites and the increased weight to be applied to housing policies in the New London Plan. It is contended that there is no evidence that the Council have exercised a proper balance of planning merits in reviewing their case. It is also contended that the Council has used vague, generalised or inaccurate assertions about the proposal's impacts on the character and appearance of the area (reasons 1 and 2) unsupported by any objective analysis, and by refusing permission in relation to living conditions (reason 3) which are capable of being dealt with by conditions.
4. The Council's statement following notification of redetermination is brief but does acknowledge a significant level of undersupply of housing and that the tilted balance at Paragraph 11(d) of the National Planning Policy Framework therefore applies. The statement does not refer to the updated status of policies in the New London Plan but does set out a planning balance in which it is contended that the adverse impacts arising from the proposal would

significantly and demonstrably outweigh the benefits through a contribution to housing supply. The Council's costs rebuttal statement confirms awareness of the changes to the New London Plan, but regardless of this the Council came to the view that the primacy of their own development plan and harm in relation to its adopted policies on issues raised in all refusal reasons remain and would outweigh the benefit to housing supply. This is an exercise of planning judgement that the Council was entitled to make.

5. In relation to the first refusal reason it is incorrect to claim that the Council relied on a precedent argument. Whilst the second sentence in the reason refers to an undesirable pattern for similar piecemeal infilling, the first sentence established the related perceived harm in relation to the massing and siting of the building on the garden character of the area. The Council's statements expanded on this commenting that the proposal would not be complementary to its surroundings but would be visually obtrusive and overbearing.
6. The Council did not attribute a special character to the back gardens to the houses in Lancing Road outside general policy designations, such as equivalent to the protection afforded to conservation areas. It did relate the perceived harm to the garden character to policies set in their development plan. I do not consider that the Council's case amounted to vague, generalised or inaccurate assertions about the proposal's impacts.
7. The Council acknowledged that Gravel Pit Way has a different character, utilitarian in appearance, but this did not change its findings of a significant adverse impact on the garden character of the site. It also acknowledged the designation of 18-44 Homefield Rise as a development site. The recent grant of planning permission here is a material consideration indicating the likely imminence of development that would change the character of the Gravel Pit Way frontage, but so is the refusal of permission and dismissal at appeal of an earlier proposal at the site that was considered unduly harmful in to the suburban character of the land to the rear. The permission at the Homefield Rise site is consistent with its long term designation as a development site and was weighed in the Council's initial assessment of the appeal proposal. The existence of the recent permission does not necessarily undermine the veracity of the Council's reasoning in continuing to resist the proposal on the reasons in the decision notice.
8. The applicant had suggested imposition of a planning condition to require approval of design details to or removal of the rear balcony as mitigation for claimed overlooking. Unreasonable behaviour is alleged in relation to the Council's silence on the suggestion, particularly in their most recent updated statements. The Council's statement following notification of redetermination did not expressly address this issue, briefly commenting that all parts of its original statement remain relevant save for Policy 1 on housing supply.
9. Nonetheless, in my judgement, there is sufficient clarity and consistency on the Council's stance on this issue. The third refusal reason does not refer directly to the balcony, but to increased overlooking from a high level affecting both privacy and amenity. My findings are that the high level impacts relate not just to the balcony. The Council's silence in relation to suggested condition could only be construed as non-acceptance of the suggestion as part of their case in maintaining objection to the proposal on all three refusal reasons.

Conclusion

10. The Council could have provided fuller explanations of their concerns and responded more completely to the issues raised by the applicant during the appeal process. But their concerns were nevertheless set out fully in the decision notice and supported with evidence in relation to development plan policies thereafter. It would have been necessary for the appellant to contest the appeal on each of these issues. The brevity of the Council's statement following notification of redetermination in relation to the changes of circumstance and the suggestion of a condition on the balcony does not change this.
11. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in Planning Practice Guidance, has not been demonstrated. Neither a full nor partial award of costs is justified. The application should not succeed.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR