
Costs Decision

Site visit made on 19 October 2020

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th January 2021

Costs application in relation to Appeal Ref: APP/G5180/W/19/3237155 Kelsey House, 77 High Street, Beckenham BR3 1AN

- 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 D Watson (Travelodge Ltd and Dunward Properties Ltd) for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of the Council to grant planning permission for a Five storey extension to the existing property to the west and south of the site, and an increase to footprint of the existing 6th floor to provide a 68 room hotel provision and 9 new residential units, including external balconies, undercroft access.
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Decision

1. Although the application is for a full award of costs, only a partial award is allowed. The reasons for this decision are detailed below.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council has exhibited unreasonable behaviour in relation to procedural matters and in relation to the substance of the matter of the appeal that should have rendered it un-necessary.

Procedural Matters - lack of co-operation with the other party or parties; delay in providing information or other failure to adhere to deadlines

4. Paragraph 38 of the National Planning Policy Framework (the Framework) requires Councils to approach decisions on proposed developments in a positive and creative way and work proactively with applicants. The evidence indicates that a request by the appellant to be provided with the internal consultation responses was refused forcing the appellant to make a Freedom of Information (FOI) request to obtain the documents. This course of events is not directly disputed by the Council and engaging in the FOI process would have resulted in additional work for the appellant.
5. Whilst the requirements within the Framework cannot be interpreted as meaning that the Council is obliged to provide all consultee responses as a matter of course, if the documents would in any event have to be turned over through an FOI request, it would have been more reasonable to provide them

to the appellant in the first instance. This matter is representative of a lack of co-operation on the part of the Council.

6. The evidence therefore indicates that the Council has behaved unreasonably and that unreasonable behaviour has directly caused the appellant to incur unnecessary expense in the appeal process.

Substantive Matters – preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; acting contrary to, or not following, well-established case law

7. As can be seen from the appeal decision letter, I do not consider that the refusal of the application prevented or delayed development which should clearly have been permitted. In particular, the Council were entitled to come to the decision that the proposal was in conflict with Policy 97 of the Bromley Local Plan (2019) (BLP) and refuse it on that basis.
8. The delegated report acknowledges that there is no explanation in Policy 97 of the BLP or any supporting guidance as to what the marketing evidence for the purposes of Policy 97 should entail. It does however seek to move forward on the basis that marketing evidence should be robust, as it is required to test the demand for the office floor space in question. It also suggests that marketing information should be recent, comprehensive and on reasonable terms.
9. There was nothing unreasonable in considering marketing evidence on these terms within the context of Policy 97. There is no evidence that the Council directly applied the criteria of other policies to their deliberations on this matter.
10. The second refusal reason cites the absence of any agreement from the applicant to enter into a planning obligation to mitigate the impacts of the development on town centre infrastructure and the built environment on the basis that the development would place the surrounding public realm under increased strain.
11. However as can be seen within my decision the request for mitigation was not unreasonable and was in line with the relevant legislation. In any event, in the meantime, the appellant has submitted a finalised unilateral undertaking, which contains the mitigation requested by the Council in the form of financial contributions. This is dated January 2020 and significantly post-dates the Council's decision in September 2019.
12. Evidence has been produced to substantiate both reasons for refusal, and clear conclusions on the impact of the proposal have been drawn which were supported by detailed objective analysis. The decision could have been clearer in weighing the competing policies given that Policy 88 of the BLP supports the provision of hotels within central locations. However, there is no clear evidence that the Council have acted contrary to well-established case law.
13. The appellant has raised further concerns regarding matters surrounding the planning agreement and because the Council failed to notify the planning inspectorate of a prior notification that was approved during the course of the appeal. This appears to be an example of somewhat un-co-operative

behaviour. However, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and awards cannot extend to compensation for indirect losses, such as those which may result from delay in obtaining planning permission.

Unreasonable behaviour which has resulted in unnecessary or wasted expense is not clearly demonstrated in relation to these matters.

Costs Order

14. 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 London Borough of Bromley shall pay to Mr D Watson (Travelodge Ltd and Dunward Properties Ltd) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in obtaining copies of the requested consultation responses.
15. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

T J Burnham

INSPECTOR