
Costs Decisions

Site visit made on 4 January 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2021

Costs application in relation to Appeal A Ref: APP/K0235/W/20/3260326 Land to the East of 13 Trevor Drive, Bromham MK43 8PJ

- 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 Raj Narang on behalf of Avoko for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by Condition No 3 of planning permission Ref 18/00340/FUL for the demolition of existing garages and erection of two x three bed detached dwellings and all ancillary works.
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Costs application in relation to Appeal B Ref: APP/K0235/W/20/3260327 Land to the East of 13 Trevor Drive, Bromham MK43 8PJ

- 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 Raj Narang on behalf of Avoko for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by Condition No 5 of planning permission Ref 18/00340/FUL for the demolition of existing garages and erection of two x three bed detached dwellings and all ancillary works.
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Costs application in relation to Appeal C Ref: APP/K0235/W/20/3260330 Land to the East of 13 Trevor Drive, Bromham MK43 8PJ

- 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 Raj Narang on behalf of Avoko for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by Condition No 6 of planning permission Ref 18/00340/FUL for the demolition of existing garages and erection of two x three bed detached dwellings and all ancillary works.
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Decisions

1. The applications for an award of costs, in relation to Appeal A, Appeal B and Appeal C, are refused.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved

unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The applicant considers that the Council did not handle the application that was made to discharge planning conditions¹ dated 29 April 2020 (the discharge application) in a positive, proactive, creative or timely manner. It has been suggested that the Council's case officer did not at any point discuss the conditions that are now the subject of the planning appeals, nor request any amendments, additional details or clarifications. It is also asserted that, in the absence of an agreed extension of time, the Council did not proceed to determine the discharge application and subsequently failed to seek to resolve matters in a positive manner following the serving of a deemed discharge notice.
4. The Council sought additional information with respect to the discharge application via an email dated 24 June 2020, thus shortly before the expiry of the statutory 8-week period for determination. However, this requested additional information did not relate to the conditions that are the subject of the planning appeals to which these costs applications relate. Indeed, there is no obvious reason why the absence of this requested additional information should have prejudiced the Council's ability to actively progress other elements of the discharge application in a timely manner.
5. The Council has stated that it pursued an agreed extension of time to enable discussions with the case officer to take place and to reach a resolution. This is corroborated by email correspondence dated 2 September 2020 (thus outside of the statutory determination period) where it was made clear by the case officer that an extension of time would need to be agreed in order to enable the discharge application to be prioritised. Notwithstanding the dialogue that followed between the parties, this approach was neither justified nor proactive and demonstrates unreasonable behaviour.
6. Indeed, the applicant was not obliged to agree an extension of time and the absence of such an agreement should not have led to further delay nor influenced the level of priority applied. This is particularly so in the context of the evidence indicating that no meaningful feedback was offered to the applicant (in respect to submissions relating to Conditions 3, 5 and 6) during the statutory period for determination. Similarly, there is no obvious reason why an enquiry, and thus not a clearly stated intention, related to moving a plot (emailed to the Council on 24 August 2020) should have influenced the Council's handling of submissions related to external materials, boundary treatments or landscape works.
7. Nevertheless, whilst all parties are expected to behave reasonably throughout the planning process, it must be noted that costs can only be awarded if unnecessary or wasted expense at appeal stage can be demonstrated. As will be seen from the decisions on the planning appeals that are the subjects of these applications, each appeal has been dismissed. Indeed, a not insignificant extent of dialogue/negotiation would likely have been required to attain satisfactory proposals and to overcome the Council's objections.

¹ referenced 20/00918/AOC; 20/00922/AOC; 20/00923/AOC (in so far as the conditions that are relevant to these costs applications)

8. I have noted email correspondence sent on behalf of the applicant and dated 8 September 2020 where it was indicated that only a level of finish not too far removed from that originally intended could be negotiated. Furthermore, there is nothing before me to clearly indicate that agreed boundary treatment and landscaping details (which would act interdependently to the site's edges) would have been achievable through willing compromise/negotiation between the parties. To my mind there is a significant level of doubt that each of the planning appeals could have been avoided, even had the Council taken a timely, positive and proactive approach to determining the discharge application.
9. I further note that the deemed discharge notice served by the applicant did not place a specific mandatory responsibility upon the Council to enter into negotiations. The process instead simply set a deadline for determination, following which deemed discharge would apply.
10. For the reasons set out above, and notwithstanding the unreasonable behaviour that I have identified, unnecessary expense during the appeal process has not been clearly demonstrated. Thus, having had regard to all other matters raised, an award of costs in relation to Appeal A, Appeal B or Appeal C is not justified.

Andrew Smith

INSPECTOR