



Costs Decision

Site visit made on 22 January 2021

by Michael J Muston BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021.

Costs application in relation to Appeal Ref: APP/D5120/D/20/3258944 238 Woolwich Road, London SE2 0DW

- 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 K Singh for a full award of costs against the Council of the London Borough of Bexley.
 - The appeal was made against the refusal to grant permission for the retention of alterations to ground levels and partial retention of retaining walls, the provision of new/altered retaining walls, boundary fencing, construction of steps and terracing of the rear garden with associated planting, including excavation works.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded where a party has behaved unreasonably, and where the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The PPG makes it clear that planning authorities are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. As examples of behaviour that may give rise to a substantive award of costs against a local planning authority, the PPG also lists vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, and not determining similar cases in a consistent manner.
 4. The applicant argues that the Council has determined the appeal scheme and other proposals at neighbouring properties in an inconsistent manner, and that Councillors at the Committee meeting that determined the application appeared to be prejudiced against the proposal and applicant, did not understand that the proposal included alterations to the work on site, and raised irrelevant/inaccurate matters.
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5. The applicant has also raised concerns regarding the way the enforcement process was handled. However, unreasonable behaviour and any resulting wasted expense that can be the subject of this award of costs decision is limited to that incurred in this appeal process, so cannot include the financial implications of the process surrounding the issuing of the enforcement notice or the decision taken by the Council to prosecute for non-compliance with that notice.
6. The webcast of the Committee meeting that determined this planning application is not before me in evidence. If the allegations made by the applicant as to the comments made by some Councillors at that meeting, and some of the language used, are accurate, they may suggest a prejudice against the proposal. However, I cannot verify these allegations.
7. In any event, whatever was discussed at the meeting, the reasons for refusal related to relevant material considerations. The fact that I have found against the Council in relation to the two main issues does not necessarily mean that the reasons for refusal were unreasonable. I could understand that concern regarding the visual impact of the scheme from adjoining land was not unreasonable, and these concerns were supported by specific and reasoned evidence put forward by the Council in defending the appeal.
8. I note that the reasons for refusal in relation to this planning application were identical to two of the three reasons advanced in relation to that previously dismissed at appeal. I have considered whether this indicated a lack of understanding from the Committee that the proposal before them in the latest scheme involved a significant element of proposed work, and that the resulting works on site would therefore be materially different from those previously refused. However, it is clear in the Council's submitted case in relation to the resulting appeal that the differences between the two schemes was appreciated.
9. I was able to see the works permitted at No 240 on my site visit. I could see that, given the topography of the land, the two proposals were not the same as each other, and would have resulted in different effects on neighbouring land. I do not consider that this is a case where similar cases were determined in an unreasonably inconsistent manner.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Michael J Muston

INSPECTOR