
Costs Decision

Site visit made on 26 January 2021

by Mr Kim Bennett BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2021

Costs application in relation to Appeal Ref: APP/G5180/W/20/3258031 Land at rear of 2A/2 Plantation Drive, Orpington, Kent BR5 4NY

- 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 Ms C Powell 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 the erection of a one bedroom bungalow.
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Decision

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

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. Examples of what might constitute unreasonable behaviour are also set out in the Guidance and include such matters as applications being dealt with in an efficient and timely process, adherence to procedural issues, and failure to adhere to deadlines. The Guidance also makes it clear that the examples set out are not exhaustive.
3. The appellant's claim for costs is based around two concerns, namely: that the Council delayed consideration of the application beyond what could be regarded as reasonable, and secondly that it placed undue reliance upon a previous appeal decision which involved consideration of policies which have since been superseded.

Length of decision making

4. The appellant suggests that from the time of validation of the application in February 2020 to a phone call to the line manager in July 2020, there was little contact with the Council. However, from email exchanges submitted by the Council it is clear that the agent for the appellant was corresponding directly with the Highway Officer during April 2020 to address the question of parking at No 2A Plantation Drive. I also note that the agent was still in contact with the Highway Officer regarding alternative provision for parking for No 2A as late as the end of July 2020, as evidenced from details in the Grounds of Appeal.

5. I find it slightly surprising that the case officer was apparently not involved in these discussions, but from the evidence before me there was clearly active consideration of a related issue to the development by the wider Council following validation of the application.
6. The Council advises that there was further internal communication between the case officer and his line manager during May 2020 and although the Council suggests the agent was kept updated, there is no specific evidence before me to show that was the case. The agent considers that such dialogue was not apparently communicated to him until August 2020. However, whatever the precise situation was regarding communication between the two parties, the effects of the pandemic were taking hold on all local authorities at that stage, requiring huge changes to daily working practices including working from home for most officers and therefore the lack of normal day to day contact, notwithstanding the assistance of electronic means. In that scenario I find it understandable that there were some associated delays to normal working practice.
7. Should the appellant have come to the view that the delay was unreasonable and was concerned about the potential impact upon changing market conditions, or alternatively that the processing of the application had stalled for some reason, she could have exercised her right to appeal against non-determination any time after 17 April 2020. However, she clearly did not and on the contrary her agent was still in communications with the Highway Officer as late as July 2020. I also note that although the lack of replacement parking for No 2A Plantation Drive was clearly an issue, the Council advises that the appellant never formally submitted a revised plan to address that issue until October 2020.

Undue reliance upon previous appeal decision and policies

8. The appellant contends that the Council placed undue reliance upon the previous appeal decision in 2012 which was decided on the basis of the then adopted Development Plan policies at the time. However, in reading the officer report, it is quite clear that it fully addressed all the appropriate up to date policies in both the current Local Plan, The London Plan and guidance within the National Planning Policy Framework and reached its decision accordingly. It is also unsurprising that it had due regard to the planning history on the site, as well as associated appeal decisions, since they were clearly material planning considerations in reaching a decision. Similarly, I am also satisfied that the Council was fully aware of the changes to the streetscene resulting from the new development in Quilter Road opposite, albeit that it placed a different emphasis on the impact of that on the appeal proposal, than the appellant did. That is a question of judgement. However, the matter was clearly addressed in the officer report.
9. That the Council drew comparisons with comments made by the Inspector in the 2012 decision is also of no great surprise given that some of the issues raised were similar, even if they were covered by different policies than under the currently adopted plan. Indeed, in a separate decision I have also found that some of the issues are similar to the 2102 decision.

Conclusion

10. I understand the frustrations of the appellant in terms of the time taken to reach a decision, and whilst communication from the Council to keep the appellant abreast of progress might have been better than it was, I do not regard that as unreasonable behaviour, particularly as part of the Council at least was in active discussions with the agent on the highways matter. I also consider that the timing of the application, coinciding as it did with a pandemic of unprecedented history, must carry some weight and understanding by applicants that normal services would inevitably be disrupted whilst significant adjustments to working practices were being made.
11. Accordingly, and for the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary delay or non-adherence to procedural issues, as described in the Planning Practice Guidance, has not been demonstrated.

Kim Bennett

INSPECTOR