



Costs Decision

Site visit made on 26 May 2021

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Costs application in relation to Appeal Ref: APP/G5180/W/20/3265271 Land Rear of 166-172 Pickhurst Lane, Hayes, Bromley BR2 7JB

- 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 Mark Grieves (MSM Developers Ltd) for a full award of costs against the London Borough of Bromley Council.
 - The appeal was against the refusal of planning permission for construction of a pair of semi-detached and two detached dwellings, with associated parking, bin storage and cycle storage facilities, with new vehicular and pedestrian access way.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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.
3. Unreasonable behaviour may be procedural and/or substantive. As the main parties submitted their cases in writing there is no need to repeat them in full.
4. In this instance, the basis of the appellant's application for a full award of costs falls in to two distinct areas where they feel there has been unreasonable behaviour on the part of the London Borough of Bromley Council (the Council):
 - In refusing the application and the reasons given for this refusal.
 - In failing to adequately substantiate its reason for refusal on appeal.
5. The appellant is of the view that the reasons for refusal given by the Council are imprecise and, therefore, do not conform to Paragraph 20 of the PPG and, thereby, article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. However, reference to individual properties (including those allowed on appeal) and the specific nature of the harm identified by the Council were detailed in the Council's planning report. Given the appellants evident identification of the properties and harms concerned, it was clearly not necessary to expand the reasons for refusal in these regards. The Council have also properly related these reasons to planning policy as required.
6. It was for the applicant to define the nature and scope of their proposal and make the case for it. The Council's expressed views on the scheme developed

as the scope and design of the scheme developed, the planning issues raised by the proposal became apparent, and the supporting information provided by the appellant became available. However, from the material provided for the purposes of this appeal, there is nothing to suggest that the council was providing its pre-application advice and feedback on the application proposal in anything other than good faith.

7. Further, I find that the Council has not made vague, generalised or inaccurate assertions about the impact of the proposal, unsupported by any objective analysis, including those related to the appellant's arboricultural impact assessment and ecological survey.
8. In line with the PPG planning authorities are expected to produce evidence backed by policy at the appeal stage, to substantiate each reason for refusal with reference to the development plan and all other material considerations. In their appeal statement the council appear to have relied heavily on material from their planning report that covers much of this ground. The appellant is of the view that in doing so, the Council have failed to address the points raised by the appellant in their statement of case. However, I find that where the appellant has provided additional information and reasoning relevant to the appeal, the council have reasonably responded to this in terms of defending their case, including the further material provided on the ecological survey for the purposes of this appeal.
9. Whilst I appreciate that the appellant views differ from those of the Council on the merits of the proposed development, and I have agreed with the appellant on 2 of the 4 main issues of the appeal, I have had regard to the examples of behaviour given in paragraph 49 of the PPG that may give rise to an award of costs. On the evidence before me there is no case that the Council had prevented a development that should evidently have been permitted. Further I find that the Council adequately substantiate the given reasons for refusal on appeal. Therefore, for the reasons given, I find that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

Conclusion

10. The application for a full award of costs is refused.

Victor Callister

INSPECTOR