



Costs Decision

Site visit made on 17 June 2021

by C Rafferty LLB (Hons), Solicitor

Decision by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2021

Costs application in relation to Appeal Ref: APP/E5330/W/21/3268877 57A Kingsground, Eltham SE9 5EY

- 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 Colin Brown for a full award of costs against the Council of the London Borough of Greenwich.
 - The appeal was against the refusal of planning permission for the construction of a single storey rear extension and subdivision of plot to facilitate construction of a two storey dwelling house (1 x 2 bed).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may 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 asserts that the Council acted unreasonably by going against officer advice to approve the application. In addition, citing examples given in the PPG, the applicant submits that the Council has further behaved unreasonably in (i) failing to produce evidence to substantiate the reason for refusal and; (ii) presenting inaccurate assertions about the impacts of the proposal.
4. I have noted the officer recommendation to approve the application. However, this is not the ultimate decision of the Council. While I also note the discussions that occurred at Committee, Council members were quite entitled to reach an alternative conclusion against the advice of officers and were within their rights to refuse the application. As such, they have not acted unreasonably by doing so.
5. Although the Council is not duty bound to follow the advice of its officers, it is beholden of the Council to clearly demonstrate on material planning grounds why a proposed development is unacceptable and provide clear evidence to substantiate that reasoning at an appeal. The reason for refusal set out by the Council is based on the impact of the development on the openness of the site, causing harm to the character and appearance of the surrounding area. Conversely, the officer report clearly states that the proposed dwelling would be discretely located and that there would be no visual harm arising from the development.
6. While this reason for refusal is a matter of judgement and a site visit was undertaken, I have little evidence before me that in reaching its decision the

Council took account of the character of the site, its surroundings and the context in which the proposal would be seen. The Council has not submitted a Statement of Case as appeal evidence to substantiate that the proposal would cause a level of harm in this regard that warrants refusal, and has provided no detail in its Decision Notice to support its position. Accordingly, the Council's position can only be concluded as being premised on the basis of generalised and unsupported assertions about the effect of the proposal. It is neither sufficient nor reasonable to rely upon a response to an Application for Costs as a means of setting out the Council's case.

7. I therefore consider that the Council's case was deficient, having regard to the grounds of unreasonable behaviour referred to in paragraph 049 of the PPG on production of evidence and vague and inaccurate assertions. As a result, the applicant incurred unnecessary and wasted expense in responding to the reason for refusal and a full award of costs is justified.

Costs Order

8. 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 Council of the London Borough of Greenwich shall pay to Mr Colin Brown the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. Mr Colin Brown is now invited to submit to the Council of the London Borough of Greenwich, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Rafferty

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too concur that the application for an award of costs is allowed.

Martin Seaton

INSPECTOR