



Costs Decision

Site visit made on 28 October 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/01/2022

Costs application in relation to Appeal Ref: APP/G5180/W/21/3273617 28 Bruce Grove, Orpington BR6 0HF

- 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 C Pasterfield - Dryden Way Building Co. Ltd. for a full award of costs against London Borough of Bromley.
 - The appeal was against a refusal to grant planning permission for 'Development of land off Dryden way to rear of No 28 Bruce Grove, BR6 0HF, with erection of a flatted development with part two/three stories providing a total of 9 residential units incorporating 4 x one bedroom flats and 5 x two bedroom flats, with new courtyard and communal garden spaces, and new vehicular access with 4 off street parking spaces'.
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Decision

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

Reasons

2. The 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. The PPG provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include where an LPA has failed to produce evidence to substantiate each reason for refusal on appeal or has made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
3. The applicant contends that the current appeal scheme addressed all matters of concern that were raised by the Inspector that dealt with the previous appeal decision¹ dated 2 March 2021 and therefore that the Council acted unreasonably in refusing the planning application against the advice of its professional officers.
4. The Council made its decision on the current appeal scheme on 2 February 2021 and therefore had not had the benefit of seeing the previous appeal decision at that point in time. In any case, the Council's Planning Sub Committee was entitled to reach its own conclusions on what was a different scheme particularly in respect of subjective matters relating to the character and appearance of the area and the effect on neighbouring living conditions.
5. Notwithstanding the above, the Committee minutes and reasons for refusal on the decision notice only summarise the Council's concerns. The reason for refusal relating to the relationship with neighbouring residential properties is

¹ APP/G5180/W/20/3251273

particularly vague and does not detail the specific relationship of the proposal with individual properties or the detailed aspects of the design which were considered to result in harm to living conditions in each case. The Council has provided no further evidence to substantiate the reasons for its decision.

6. In resolving not to contest the appeal, the Council suggests that 'its earlier concerns have been adequately addressed' having regard to the previous appeal decision. However, without any objective analysis, it is unclear how the previous Inspector's comments on a different scheme led the Council to conclude that its reasons for refusal on the current appeal were no longer relevant or could not be substantiated. I did try to seek further clarification from the Council in respect of its change of stance but no detailed explanation has been provided.
7. Even though I am dismissing the appeal, I only identified harm to neighbouring living conditions through my own detailed analysis of the appeal scheme in order to respond to the concerns raised by third-parties. The Council has still acted unreasonably in not substantiating the reasons for its decision and in subsequently not adequately explaining why it no longer wanted to defend the appeal.
8. In addition, the Council was notified that the appeal was valid on 5 May 2021 and therefore was already in receipt of the previous appeal decision by that point in time. It is therefore unclear why the Council took until 30 September 2021 to resolve not to contest the appeal. This compounds the Council's unreasonableness and the wasted time and expense for the applicant.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 London Borough of Bromley shall pay to Mr C Pasterfield of Dryden Way Building Co. Ltd, 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.
7. The applicant is now invited to submit to London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Russell

INSPECTOR