



Costs Decision

Site visit made on 27 April 2022

by David Smith BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Costs application in relation to Appeal Ref: APP/Z5060/W/20/3249128 68 Ivyhouse Road, Dagenham, RM9 5RR

- 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 Mohamed Bharadia for a full award of costs against the Council of the London Borough of Barking and Dagenham.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission to demolish existing garage and create a new 2 storey, single occupancy, studio home.
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Decision

1. The application for an award of costs is allowed in the terms set out below.
2. This decision supersedes that issued on 18 May 2021 which was quashed by an Order dated 5 August 2021.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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 also indicates that behaviour and actions at the time of the planning application can be taken into account in considering whether or not costs should be awarded.
4. The National Planning Policy Framework observes that decisions on applications should be made as quickly as possible. The application was submitted in November 2019 and should have been decided by 8 January 2020 but this did not happen. The Council unreservedly apologises for this. However, whilst several extensions of time were agreed, there is no evidence that the applicant was provided with any explanation as to why the Council was unable to determine the application within its time limit. It is also alleged that there was no engagement with the applicant following the departure of the original case officer. Both the delay and the lack of meaningful contact about the application was unreasonable and led to an appeal being lodged.
5. The delegated report that was submitted as the Council's appeal statement contained no reference to the results of the latest Housing Delivery Test or the housing land supply position as highlighted in the applicant's statement. It did not apply paragraph 11 d) of the Framework as it should have done or contain any balancing of the alleged harm against the benefits arising from a single dwelling. These omissions mean that it is not evident that the scheme was

- properly considered having regard to national policy and section 38(6) of the Planning and Compulsory Purchase Act 2004. This was also unreasonable.
6. The Council's assessment stated that the proposal would *"result in significant overlooking particularly at first floor level as residents of the proposed dwelling will be able to look directly into the kitchen/ dining room window and across the whole rear garden at no. 1 resulting in the loss of privacy detrimental to the standard of living of resident of this property."* However, this was an inaccurate assertion about the impact of the proposal given that no first floor windows facing 1 Shortcrofts Road were included. This objection has not been pursued but the original consideration of this matter was unreasonable.
 7. Reference is made to The London Plan and at the time of the Council's report this had not finally been published so it was reasonable to refer to it as draft.
 8. Nevertheless, there has been unreasonable behaviour by the Council in a number of respects. The PPG warns of the risk of an award of costs if better communication would have enabled the appeal to be avoided. Furthermore, if the Council had expressly applied paragraph 11 d) and taken other material considerations into account, would it have reached a different view?
 9. The Council has subsequently commented that the weight to be attributed to the benefits of the development in contributing to housing need and the economy would be limited, given its modest scale. It is therefore by no means certain that these factors would have outweighed the objection raised. Rather it is more reasonable to assume that, even if a discrete balancing section had been included, permission would still have been refused. This is especially as subsequent, revised applications have also been unsuccessful. The same outcome would also have been likely if the Council had engaged more actively with the applicant or had decided the application more promptly. Therefore, even if the Council had acted reasonably in these respects, it is not apparent that an appeal could have been avoided.
 10. However, the objection on overlooking grounds was baseless. The applicant should not have had to deal with this matter as part of the appeal. Whilst this comprises only a small part of the work undertaken in contesting the appeal, it was an issue that should not have been necessary to cover at all. Therefore unnecessary expense was incurred.
 11. In conclusion, there has been unreasonable behaviour due to the failure to communicate during the application stage about the delay and in the assessment of the proposal in relation to other material considerations, including the Framework. However, these have not resulted in unnecessary or wasted expense. But this has occurred following unreasonable behaviour in respect of the objection made regarding overlooking and privacy and a partial award of costs is therefore warranted.
 12. The outcome of the costs application is different to that reached previously. However, it follows from my findings about the appeal and addresses the specific points raised by the applicant. In particular, whilst the previous Inspector commented that Policy BP8 deals with overlooking, this does alter the fact that the Council was incorrect to contend that there would be overlooking of the neighbouring property.

Costs Order

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 Barking and Dagenham shall pay to Mr Mohamed Bharadia, the costs of the appeal proceedings described in the heading of this decision limited to the costs incurred in contesting the purported reason for refusal relating to overlooking and privacy; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Smith

INSPECTOR