



Costs Decision

Hearing Held on 5 April 2022

Site visit made on 8 April 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2022

Costs application in relation to Appeal Ref: APP/G5180/W/21/3273659 Land South of the Manor, New Barn Lane, Cudham, Westerham TN16 2HT

- 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 Divami Ltd. for a full award of costs against the Council of the London Borough of Bromley.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use of existing agricultural building to Class C3 dwellinghouse and associated building works (56 day application for prior approval in respect of transport and highways, noise, contamination, flooding risks, location, siting and external appearance under Class Q of Part 3 of schedule 2 of the GPDO).
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Decision

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

The submissions for Divami Ltd.

2. The applicant considers that the Council has acted unreasonably as it was heavily influenced by its opposition to any development in the Green Belt and that it failed to produce evidence to substantiate each reason for refusal and that it also failed to adequately explain alleged inconsistencies in the evidence submitted by the applicant. The applicant also considers that the Council did not properly consider their submitted evidence in favour of the appeal scheme.

The response by the Council of the London Borough of Bromley

3. The Council consider that it has sufficiently justified and substantiated its position in relation to its decision in accordance with established caselaw, previous decisions and policy guidance. It also considers that it acted consistently and at no stage used national Green Belt policy to justify the refusal of the original planning application.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include failing to produce evidence to substantiate each reason for refusal on appeal. Unreasonable behaviour in the context of an application for an award of costs may be either procedural

- (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
5. The Council's officer report does set out in some detail the reasons as to why it considered the proposed development unacceptable and at no point does it refer to national Green Belt policy or use the fact that the appeal site is within the Metropolitan Green Belt as a reason for refusal. It is also clear from the officer report that the Council did consider the evidence submitted by the applicant and that they adequately explained inconsistencies that its officer found in that evidence. The Council also submitted evidence to demonstrate these inconsistencies at appeal stage.
 6. Accordingly, I consider that the Council did not fail to produce evidence to substantiate each reason for refusal on appeal and that it also did not fail to adequately explain alleged inconsistencies in the evidence submitted by the applicant.
 7. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the Council adequately explained the reasoning behind their decision. As a result, I find that the Council had reasonable concerns about the impact of the proposed development which justified their decision. The refusal of planning permission in this case therefore does not constitute unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Guidance.
 8. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and that an award of costs is not justified.

C Coyne

INSPECTOR