



Costs Decision

Site visit made on 11 April 2022

by M Russell 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/21/3277453 Land adjacent to 21 Dalton Close, Orpington BR6 9QY

- 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 WBerkton Limited for a full award of costs against London Borough of Bromley.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for planning permission for the erection of a two-storey 4 bedroomed dwelling house.
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Decision

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

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 (LPAs) 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 its case, has made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis or where planning permission has been refused on a ground capable of being dealt with by condition.
3. The applicant contends that the Council's failure to produce a timely decision without the benefit of an agreed extension of time has resulted in additional consultation fees and time delays. They claim that the Council ignored the advice of the applicant's expert tree consultant and did not engage in any meaningful way. It is also suggested that the Council's concerns could have been addressed by condition. Furthermore, the applicant contends that the grounds set out by the Council are vague, poorly composed and unsubstantiated.
4. The Council has not responded to the application for costs. While I acknowledge that the appeal followed the Council's failure to determine the planning application, this in itself does not warrant an award of costs. The planning application was dated December 2020, yet the appeal was not lodged until June 2021. Therefore, it is unclear why an appeal was not made earlier if the appellant was sufficiently concerned about a lack of engagement and/or

time delays. Regardless, no detailed evidence is before me to verify that the Council did not engage in any meaningful discussions with the applicant.

5. The Council's statement of case sets out the grounds on which the Council resolved to contest the appeal. The reasons given are precise and refer to relevant development plan policies. The Council has also provided a delegated report which adequately substantiates the Council's concerns.
6. Matters relating to character and appearance and living conditions are subjective matters. Indeed, I have concluded differently to the Council on the latter of these main issues. Even so, the Council's officers were entitled to come to their own view on the contribution that the protected trees on the site make to the character and appearance of the area. In any case, I have found that it is the combination of the erosion of space and soft landscaping, including these trees, that would result in fundamental harm to the character and appearance of Dalton Close. Therefore, the Council's overall concerns in respect of the effect on character and appearance were not unfounded and could not have been overcome by conditions.
7. Furthermore, the Council has acknowledged that it is unable to demonstrate a 5-year housing land supply. Even had it determined the planning application and applied a planning balance having regard to paragraph 11d of the National Planning Policy Framework, my own overall conclusion on the appeal finds that other material considerations do not outweigh the harm identified to the character and appearance of the area. Therefore, I disagree with the applicant's suggestion that permission should have been granted having regard to the planning balance required by paragraph 11d.
8. For the reasons set out, I therefore find that there has not been unreasonable behaviour which has caused unnecessary expense in this instance and the application for costs is refused.

M Russell

INSPECTOR