



Costs Decisions

Site visit made on 24 August 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2022

Costs application in relation to Appeal A Ref: APP/G5180/C/21/3284354 Land at the back of number 4 and number 5 Leaves Green Crescent, Keston BR2 6DN

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Callum Harwood for a partial award of costs against the Council of the London Borough of Bromley.
 - The appeal was against an enforcement notice alleging the erection of an extension to the existing double garage and the erection of a single storey detached outbuilding.
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Costs application in relation to Appeal B Ref: APP/G5180/X/22/3291627 5 Leaves Green Crescent, Keston BR2 6DN

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Callum Harwood for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the erection of an outbuilding comprising home office and gym.
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Decisions

1. For Appeal A, the application for an award of costs is refused. For Appeal B, 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.

Appeal A

3. The applicant seeks a partial award on the basis that the Council could have avoided wasted expense by conceding the fallback positions in a timely manner. Whilst the Council has not contested Appeal B and accepts that a fallback position for Appeal A exists, it has maintained its objection to the appeal development in Appeal A. It seems to me therefore that the Council has not conceded the fallback position and maintains that the appeal development is worse than the fallback position, a conclusion I have agreed with. The granting of the lawful development certificate has therefore made no difference.

4. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated for Appeal A.

Appeal B

5. The PPG states that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. From the information provided, no such explanation was provided.
6. In any appeal against non-determination, the PPG further states that the local planning authority should explain their reason for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. But the Council resolved not to contest Appeal B and I have not been provided with a reason for the delay.
7. The PPG states that if an appeal against non-determination is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
8. The Council has drawn my attention to its correspondence with the applicant, between 17 January 2021 and 28 January 2021. From this, it would appear that the Council was under the impression that the application in Appeal B was a duplicate application and so, in the Council's view, it did not need to be determined. But this correspondence did not begin until long after 24 December 2021, which is the date specified in the Council's letter of 23 November 2021, by when the application should have been determined. So it does not justify or explain why the Council failed to make a decision within the relevant time limit.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified for Appeal B.

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 the Council of the London Borough of Bromley shall pay to Mr Callum Harwood, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in Appeal B only; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to the Council of the 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.

L Perkins

INSPECTOR