
Costs Decisions

Site visit made on 10 November 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2022

Costs application A in relation to Appeal Ref: APP/G5180/W/22/3291022 50 Royston Road, Penge, London SE20 7QN

- 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 Rajan Vashee for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal to grant planning permission for roof additions including terrace, side extension, internal alterations and conversion from single dwelling house C3 to 2 x 2 bedroom flat and 1 x bedroom flat.
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Costs application B in relation to Appeal Ref: APP/G5180/W/22/3291023 50 Royston Road, Penge, London SE20 7QN

- 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 Rajan Vashee for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal to grant planning permission for roof additions including terrace, side extension, internal alterations and conversion from single dwelling house C3 to 2 x 2 bedroom flat and 1 x bedroom flat.
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Decision Application A

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

Decision Application B

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

Preliminary Matter

3. The costs applications are made against two separate appeals concerning the refusal to grant planning permission. Although they are separate, and the initial applications were made chronologically, the matters in each case are such that it is appropriate to deal with these applications in a single Decision document.

Reasons

4. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

5. The PPG outlines 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. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
6. Although costs cannot be claimed for the period during the determination of the planning application, the Guidance confirms that costs applications may relate to events before the appeal. It goes on to say that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
7. The applicant considers that the Council behaved unreasonably by refusing the application the subject of Appeal A for an unreasonable reason and secondly, by refusing the second application the subject of Appeal B for the same reason when the second application had met the Council's misplaced concerns on the first.
8. In both decisions the reason for refusal as set out in the notices are complete, precise, specific and relevant to the applications. They also clearly state the policies of the Bromley Local Plan the Council considered the proposals would conflict with. These reasons have been adequately substantiated by the Council in its officer reports and appeal statement which demonstrates how they considered the proposals would be harmful to the character and appearance of the property and the surrounding area, and the living conditions of the occupants of surrounding properties with regard to overlooking. I therefore do not consider that the Council acted unreasonably in refusing planning permission on each occasion for this reason. The Council exercised its planning judgement in coming to these decisions.
9. The applicant considers that in determining the applications, the Council failed to give any weight to the 'fall-back' position as set out in the planning history. Pertinent to both appeals, the 'fall-back' being a dormer to the existing outrigger that benefits from a lawful development certificate.
10. The Council did however have regard to the fall-back development and set out how it differed from the appeal proposals. It was a matter of planning judgement for the decision maker as to what weight to attribute to the fall back on each occasion in making their decision.
11. I acknowledge that the applicant, in submitting the revised application, sought to address the Council's reason for refusal on the first application. Such an approach is creditable and is advocated in the National Planning Policy Framework. Any discussion is, however, typically without prejudice to the formal decision of the Council. Therefore, were the applicant of the view that they had successfully addressed the original refusal of planning permission does not amount to unreasonable behaviour.
12. As a result, it follows that I cannot agree that the Council has acted unreasonably in these cases. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated. Therefore, a full award of costs is not justified in either case.

A M Nilsson

INSPECTOR