



Costs Decision

Site visit made on 22 September 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2022

Costs application in relation to Appeal Ref: APP/G5180/W/21/3285931 Land at 1 Ryecroft Road, Petts Wood, Orpington BR5 1DR

- 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 Miss Leyla Ali for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for a first floor side extension and elevational alterations.
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Decision

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

The submissions

2. The reasons given for the costs application are, in short, that the Council failed to have proper regard to the material considerations in this case. These include a suggested fall back position and other examples of extensions in the vicinity of the appeal site.
3. I have had regard to the Council's response to the costs application in reaching my decision.

Reasons

4. Paragraph 030 of the Planning Practice Guidance on Appeals (the Appeals PPG) 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.
5. Paragraphs 049 of the Appeals PPG provides examples of unreasonable behaviour on the part of the local planning authority. The applicant has referred to the following:
 - 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;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - acting contrary to, or not following, well-established case law; and
 - not determining similar cases in a consistent manner.

6. The applicant suggests that the fall-back position in this case would have been a side roof extension, such as that proposed in the application for a certificate of lawful use or development (LDC) subject of the linked appeal¹. The Council concluded that the development subject of that LDC application would not have been permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order). As I have found their decision in that case to be well founded, the Council were correct in their approach to the scheme of development subject of the LDC application as a material consideration.
7. The Council may not have acknowledged that some other form of extension to the property would be permitted by the Order. I do not, however, find the Council to have behaved unreasonably in this regard. Indeed, the lack of any details of an alternative permitted scheme mean that the Council were unable to make an informed comparison for the purposes of determining the weight to be attributed to a fall-back position in the planning balance.
8. The officer's report clearly considers the context of the appeal site and acknowledges the prevalence of pairs of semi-detached properties within this. This is demonstrated by the Council's addendum statement, in which the examples referred to by the applicant of development in the surrounding area are considered. In response to some of the examples, reasons for the Council's decision have been given. I am, therefore, satisfied that the Council had proper regard to other development in the surrounding area in refusing the application subject of the appeal. I am also satisfied that the Council has been consistent in its decision making.
9. Whether or not the effect of development on the balance of a pair of semi-detached properties is acceptable is a matter of judgement, where regard should be had to the particular details of the proposal in question and the circumstances that are relevant to that particular case. The Council has clearly found the extension to other semi-detached properties in the area acceptable. Indeed, the Council has given the reasons for this in some of the cases referred to by the applicant. It has also provided clear reasons why the development subject of the appeal would have an unacceptable effect on the existing balance of the dwelling at the appeal site and the adjoining 3 Ryecroft Road. In view of this, I do not find the Council to have acted unreasonably in their assessment of the development subject of the appeal.
10. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR

¹ Appeal reference APP/G5180/X/21/3287990