



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/X/21/3287990 Land at 1 Ryecroft Road, Petts Wood, Orpington BR5 1DR

- 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 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 a certificate of lawful use or development (LDC) for development described in the application as '2 floor extension'.
-

Decision

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

The submissions

2. The reasons given for the costs application are summarised as follows:
 - The Council failed to properly apply the conditions and limitations of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order) to the development proposed;
 - The Council failed to discuss the LDC application subject of the appeal prior to its determination; and
 - The Council failed to provide evidence on which it relied in determining the LDC application.
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 047 and 049 of the Appeals PPG provides examples of unreasonable behaviour on the part of the local planning authority. These include:
 - 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; and
 - lack of co-operation with the other party or parties.

6. Although the first example clearly relates to the determination of planning applications, the principles of this can be applied to this case.
7. I have concluded that both Class A and Class B of Part 1, Article 3, Schedule 2 of the Order are relevant to the development subject of the LDC application, and that compliance with the conditions and limitations of both Classes are necessary for the development proposed to be permitted by the Order. The Council has clearly made its case on this basis, and given reasons why the development would neither be exempt from the need to comply with requirements (aa) and (bb) of condition B.2.(b)(i) of Class B, nor that it would comply with these requirements. I cannot, therefore, find that the Council has failed to substantiate its reasons for the refusal of the LDC application.
8. The Council considered the other cases that had been drawn to its attention. I have done the same, finding material differences between the matters considered in those cases and those relevant to the case before me. I do not, therefore, find any fault in the Council's consideration of these other examples.
9. Much of the case made by the applicant on their costs application is a repeat of their case made under the appeal, which is that the development would be permitted by the Order. I do not, however, agree. In dismissing the appeal, I am in broad agreement with the Council's case. I do not, therefore, find any failure in the Council's application of the relevant conditions and limitations of the Order. Accordingly, the Council has not prevented or delayed development that would clearly be permitted
10. The Council may have subsequently granted an LDC for development at the appeal site. I have not, however, been provided with the details of this in order to compare it with the development subject of the appeal. Accordingly, I have insufficient evidence to conclude that unreasonable behaviour has been demonstrated on behalf of the Council in this regard. Notwithstanding this, the Council point to differences in the scheme, including the retention of eaves.
11. With regard to any discussions between the parties during the LDC application process, the purpose of an LDC application is not for the Council to advise the applicant how to amend the scheme so that it would be permitted by the Order. As noted in my appeal decision, the burden of proof is on the applicant to demonstrate that the development referred to in their application would be lawful if begun on the date the application was made. The Council were not, therefore, unreasonable in failing to liaise with the applicant on this matter.
12. I do not consider the Council to have acted unreasonably in not engaging with the applicant before making its decision on the LDC application. The evidence submitted with the application is such that there would have been little need to discuss the submission with the applicant. I am not persuaded that discussions with the applicant during the determination of the LDC application would have resulted in a different outcome in respect of the development proposed.
13. 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