The Planning Inspectorate

Costs Decision

Site visit made on 21 November 2022

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Costs application in relation to Appeal Ref: APP/G5180/W/22/3303678
172 Pickhurst Lane, Hayes, Bromley BR2 7JB

- 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 M Grieves on behalf of MSM Developers Ltd for a full award of costs against the London Borough of Bromley.
- The appeal was against the refusal of planning permission for the construction of three, 3 bedroom detached dwellings, with associated parking, bin storage and cycle storage facilities with new vehicular and pedestrian access way Ref 2 DC/21/05711/FULL1, dated 9 December 2021 and refused by notice dated 20 June 2022.

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The applicant contends that the Council has exhibited unreasonable behaviour that made the appeal necessary in that it has gone against the advice of its professional officers and experts, including a previous Inspector (appeal Ref. APP/G5180/W/20/3265271), without good reason and failed to substantiate the objection on the grounds of harm to living conditions, protected species, namely badgers, and highway safety. The applicant also contends that the refusal reasons were vague and unsubstantiated.

3. The Planning Practice Guidance (the 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 makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

4. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

5. The Council's first reason for refusing planning permission has two distinct parts, the effect of the development on the living conditions of Nos 170 and

172 having regard to privacy and disturbance. The effect of a development upon living conditions is a matter of planning judgement. There is no explicit requirement for the decision maker, in this case the Members of the Planning Committee to visit the site. In addition I see no reason to conclude that they would have been unclear as to the mitigation measures proposed. Moreover, the Council's evidence sets out clear reasons as to why they concluded that the mitigation measures would not overcome the issue of overlooking of the neighbouring properties at 170 and 172 Pickhurst Lane.

6. However, with regards to the matter of disturbance caused by users of the access drive, the Inspector in the previous appeal for a similar development on the site, for four dwellings, concluded that the additional noise and activity generated by the development would not be so great that it would cause undue harm to the living conditions of neighbouring residential occupiers. This is therefore an inaccurate assertion regarding the impact of the proposal, unsupported by any objective analysis. Without any clear evidence to substantiate that reasoning, and justify a departure from the previous Inspectors findings, I consider that the Council has behaved unreasonably in this respect.

7. With regards to the second reason for refusal, the Planning Committee considered that, despite the proposed mitigation measures, the proposal would still give rise to disturbance to the badger population. This echoed the comments of the West Kent Badgers Group. The applicant is concerned that this conclusion was reached despite the advice in reports by two separate ecologists to the contrary, as well as commentary set out in the officer's report and without any clear evidence to substantiate that reasoning. The Planning Committee therefore refused planning permission on a planning ground capable of being dealt with by a condition, which is the conclusion I reach in my decision on the appeal, having found that a suitable condition would enable the proposed development to go ahead. Furthermore, there is no reason to believe that an appropriate condition would not be properly monitored or enforced. I therefore find that the Council has behaved unreasonably in this respect.

8. The applicant contends that the Council's third reason for refusal is unreasonable given that the harmful effect of the development on highway safety had not been raised by the Council previously, or the Highway Authority. The Council is not duty bound to follow the advice of its professional officers, and in this case, having regard to the concerns of local residents and the views of members, chose to refuse the proposal on highway grounds. However, if a different decision is reached, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

9. The Council has put forward clear reasoning to substantiate why they consider the proposal would impact upon pedestrian safety. However, the reason for refusal does not refer to pedestrians, but rather the safety and flow of traffic on Pickhurst Lane. Despite clear evidence to the contrary the Council determined that the space within the site was not sufficient for larger vehicles to manoeuvre and that this would impact upon the free flow of traffic. They have failed to produce evidence to adequately substantiate this, and I

therefore consider that in relation to the third reason for refusal they have behaved unreasonably.

10. The refusal of planning permission therefore constitutes unreasonable behaviour, in part, contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated. As such I conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the second part of the Council's first reason for refusal, and the Council's second and third reasons for refusal is justified.

Costs Order

9. 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 London Borough of Bromley shall pay to Mr M Grieves, the costs of the appeal proceedings described in the heading of this decision.

10. The applicant is now invited to submit to 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Emma Worley

INSPECTOR