



Costs Decision

Site visit made on 11 January 2023

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Costs application in relation to Appeal Ref: APP/G5180/W/22/3302729 3 High Street, Chislehurst BR7 5AB

- 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 A Rutherford (Kalmax Properties Ltd) for a full award of costs against 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 planning permission for first floor rear extension to north side of building to provide additional office accommodation, removal of phone mast, elevational alterations and two additional car parking spaces.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance 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.
3. Paragraph 049 states that examples of unreasonable behaviour that may give rise to a substantive award of costs includes, amongst other things, 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.
4. Failure by the Council to accord with the 8 week target is not on its own sufficient to demonstrate unreasonable behaviour. Instead, it engages a possible appeal as a route to securing a decision.
5. In the present case it is common ground between the Council and the Applicant that the proposal is for identical works to planning permission issued in 2019. The Council's clear response to the appeal has been to indicate that the impacts associated with the proposal are acceptable. From my own assessment, which accords with the Council's, it is apparent that the proposal complies with the development plan, national policy and other material considerations. On this basis, the development should clearly have been permitted.

6. The wider pressures the Council is under to determine planning applications against a challenging resourcing backdrop and in light of pandemic recovery are noted. The steps the Council are taking to address this issue are acknowledged. This provides some evidence that, in a wider sense, the Council is exercising their duty to determine planning applications in a reasonable manner under the circumstances that they face.
7. Nevertheless, whilst I am sympathetic to the wider pressures, in this specific instance the Council have advanced no argument that the proposal raised new or novel issues that required additional or specialist consideration. In this regard, the application appears simply to have become caught up in a wider Council process of prioritisation in order to address the backlog of cases.
8. Beyond the generic text including in the validation letter, there is no substantive evidence to demonstrate that the Council made reasonable efforts to adequately communicate the timing pressures they were under to the Applicant or took any steps in this specific case to progress towards reaching a decision as quickly as possible. As such, the Applicant was put in an uncertain position in regard to when a decision would be forthcoming.
9. Whilst I acknowledge that there is a lack of evidence to demonstrate that the Applicant regularly checked in on progress of the application, as a customer of the Council this should not be an expectation. In any event, the Council's validation letter actively advises applicants not to contact them directly. The lack of proactive contact on the Applicant's part should not there count against them in the consideration of costs.
10. There is a lack of evidence from the Applicant relating to the timing for commencing the development. The fact the proposal has its origins in a scheme dating from 2019 brings into question whether commencement is imminent. As such, the degree to which delay to development has occurred in reality is open to question. Conversely, the fact that an application for planning permission was made signals an intent to carry out development.
11. Overall, on the balance of probabilities, the evidence indicates to me that the Council's actions led to a delay in development which should clearly have been permitted. This amounts to unreasonable behaviour.
12. The consequence of the unreasonable behaviour was an appeal that was entirely avoidable, with the associated wasted time, expense, and effort in submitting and supporting the appeal.
13. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

14. 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 A Rutherford (Kalmex Properties Ltd) the costs of the appeal proceedings described in the heading of this decision.

15. Without prejudice to the Applicant's costs invoice submitted as part of the claim, the Applicant is now invited to submit to the Council, 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.

D.R. McCreery

INSPECTOR