



Costs Decision

Site visit made on 30 November 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Costs application in relation to Appeal Ref: APP/G5180/D/21/3289055 10 Derwent Drive, Petts Wood, Orpington BR5 1EW

- 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 Basant Mertia for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 1, Class A, paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order), for a development described as: Ground floor rear extension, floor plan redesign and all associated works.
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Decision

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

Reasons

2. The Planning Practice Guidance (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.
3. The Council's decision states that the proposed extension by reason of its proximity to the boundary with No 12 Derwent Drive, its depth and height, would be harmful to the amenities of this neighbouring dwelling. Whilst the Order requires an assessment of the impact on 'amenity', this is a broad term which could mean any number of things including overlooking, privacy, loss of light or a combination of such matters. The Council's decision does not identify which element of amenity is at stake. In this respect, it is vague and generalised. This reflects an example of unreasonable behaviour, listed in the PPG¹. Crucially, the decision does not inform the applicant of precisely what case they have to answer on appeal.
4. From the transcript of the planning committee meeting provided, it is clear that concern about the effect of the appeal development on light enjoyed by occupants of No 12 was influenced by an assessment from a computer programme called 'Find My Shadow', undertaken by a member of the committee. But this assessment has not been put in evidence to substantiate the concern. It was introduced without the applicant or officers having had any opportunity to consider it before the decision was taken by the committee to refuse the application.

¹ Appeals, Paragraph: 049 Reference ID: 16-049-20140306

5. In light of the professional advice of officers, set out in the committee report and the fact that there would be a reduction in the height of the development closest to the boundary with No 12 (as set out in my appeal decision), the refusal of the application on grounds of the effect on light to No 12 was unreasonable. Nothing in the decision notice satisfies me that the effect on light was not a factor in the decision to refuse the application or that the decision was not at least in part made as a consequence of the computer programme referred to during the committee.
6. But the Council's statement indicates that the appeal development passes the '45 degree test' and has a lesser impact on overshadowing than a previous scheme which in this regard was deemed to be acceptable. Consequently, if the impact on light did influence the decision to refuse the application, then the concern has not been substantiated. But if the impact on light did not influence the decision to refuse the application, then the time and money spent on the daylight and sunlight report was wasted.
7. The transcript shows that the proposed extension was described in the committee meeting as "doubling" the size of the ground area of the house. But an examination of the drawings clearly shows that this is an inaccurate assertion and a misunderstanding of the proposal. I cannot be sure that the above comment did not influence the outcome of the application, particularly given concerns about the effect of the proposal on light. Nothing has been provided from the Council to make me think otherwise.
8. The information provided indicates that, as a consequence of the above, the applicant offered to resubmit the same application and not appeal, on the basis that it was accepted that the "doubling" comment was a misunderstanding. This could have avoided the appeal and the time and cost associated with it. However, the applicant received no response to his offer.
9. From the transcript of the planning committee meeting, it is clear that at least one member of the committee considered that the rooflights proposed on the side of the extension would result in "serious" overlooking and that this was a factor that contributed to the refusal of the application. Moreover, the applicant, who was present at the meeting, would reasonably consider this was part of the case to be answered in his appeal statement. The decision notice provides nothing to indicate otherwise. But as set out in my appeal decision, it is inconceivable that the disputed rooflights could result in a loss of privacy.
10. The committee's discussion of the case included concerns that a mezzanine floor may be installed in the proposed extension, enabling overlooking, and that the rooflights were at an 'upper-floor' level, meaning that they should be obscured-glazed to comply with the Order. But for the reasons set out in my appeal decision, I do not agree with either of these assertions. Despite interventions from officers at the meeting, it is clear from the transcript that the above concerns about overlooking were factors contributing to the decision to refuse the application. Nothing has been provided from the Council to make me think otherwise.
11. However, the Council's statement is not consistent with what was said at the committee in respect of privacy. Instead, the statement indicates that the rooflights would not provide an opportunity to overlook the neighbouring property. The statement draws only on the possibility of an extension being

- permitted at No 12 as posing a privacy issue for No 10 and that No 10 could install window blinds or obscure-glazing.
12. If overlooking did influence the decision to refuse the application, then the concern has not been substantiated. But if overlooking did not influence the decision to refuse the application, then the time and money spent on the appeal in this regard was wasted.
 13. It is clear from the PPG that refusing an application on a planning ground capable of being dealt with by conditions risks and award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead². It is also clear that any concerns raised about privacy and overlooking could have been addressed by the imposition of a condition, pursuant to paragraph A.4.(12) of the relevant part of the Order, requiring, for example, the rooflights to be obscure-glazed and fix shut.
 14. Yet there is no evidence of any consideration of this course of action nor any explanation as to why it was not pursued. Moreover, had such a condition been contemplated before the decision was taken, then the alleged impact upon light alone may have resulted in a different decision, making the appeal avoidable.
 15. The application was called to committee by a ward councillor. Another ward councillor was sat on the committee and the applicant is of the view that this ward councillor, as a representative of both the objector and the applicant, should have recused himself from the meeting.
 16. There is nothing before me to suggest that the Council's own procedures require a ward councillor to exclude themselves in such circumstances. Nor is there any evidence that the ward councillor on the committee was swayed by his colleague calling-in the application. The applicant's concerns regarding the conduct of the planning committee is a matter for the parties.
 17. Taking all of the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified. Noting has been provided from the Council to lead me to a different conclusion.

Costs Order

18. 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 Council of the London Borough of Bromley shall pay to Mr Basant Mertia, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to the Council of 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.

L Perkins

INSPECTOR

² Appeals, Paragraph: 049 Reference ID: 16-049-20140306