



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/W/21/3287713 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 failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for: Proposed ground floor front, side and rear extension, garage conversion, façade alterations driveway, floor plan redesign and all associated works.
-

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 PPG¹ states:

"If it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period."

If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether."

4. The planning application was submitted on 19 July 2021 and a decision was due by 13 September 2021. From the information provided, the planning application is substantially a resubmission of a previously refused application minus the roof enlargement, which was the only reason for a previous Inspector dismissing an appeal².

¹ Appeals, Paragraph: 048 Reference ID: 16-048-20140306

² Ref APP/G5180/D/3263465, dated 27 April 2021

5. Nevertheless, the Council did not give notice of its decision within the prescribed period, it did not agree an extension of time with the applicant to determine the application and it did not establish its position on the application until nearly 4 months after it should have reached a decision.
6. From the information provided, a significant factor in the delay experienced by the applicant was local ward councillors' 'call-in' of the application for determination by committee rather than by officers under delegated powers, and, no reason for the call-in was given. For the purposes of the PPG³ and in light of the previous Inspector's comments, this is, in effect, 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, (the previous appeal decision being such a material consideration).
7. As no reason was given for the call-in, the Council was, in effect, persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable, contrary to the PPG⁴. Nothing has been provided to lead me to a different conclusion in this regard.
8. The Council has drawn on the statutory consultation period for the application and objections from a neighbour, regarding dimensions on plans, as reasons for the delay in determining the application. But it is clear that the dispute regarding dimensions is in respect of a different application entirely and the consultation period ending 15 September 2021 is no excuse for why the application was not put before a planning committee until 6 January 2022. This is particularly the case given that the evidence indicates several other committee dates were available during the intervening period.
9. In respect of planning conditions, it is clear from the Council's submissions that the conditions suggested to me differ significantly from those originally recommended by officers. This is a consequence of the committee's decision. I accept that planning authorities are not bound to accept the recommendation of their officers. But this is no answer as to why conditions suggested to me include conditions which, as set out in my appeal decision, do not comply with the relevant tests for conditions set out in paragraph 56 of the National Planning Policy Framework. For the purposes of the PPG⁵, this is unreasonable behaviour.
10. It is clear that, as a result of its committee's decision, the applicant had to undertake additional work to respond to the conditions suggested for the appeal. This is particularly the case, the evidence suggests, the applicant was not invited to the committee meeting, or informed of it taking place at all. This being the case, the conditions suggested to me for the appeal were unexpected by the applicant and not properly explained or justified, even taking into account the reasons given for them by the Council.
11. Had the disputed conditions not been suggested, the applicant has indicated that they may have withdrawn the appeal and resubmitted the application, to reduce costs and time, indicating that the appeal was avoidable. I have no reason to believe this is not the case.

³ Appeals, Paragraph: 049 Reference ID: 16-049-20140306

⁴ Appeals, Paragraph: 049 Reference ID: 16-049-20140306

⁵ Appeals, Paragraph: 049 Reference ID: 16-049-20140306

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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