



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/X/21/3283102 10 Derwent Drive, Petts Wood, Orpington BR5 1EW

- 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 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 a certificate of lawful use or development for: Proposed hip to gable loft conversion, loft dormer 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. 'Not determining similar cases in a consistent manner' is one of the examples of unreasonable behaviour cited in the PPG¹. The Council acknowledges that it has already granted a lawful development certificate (LDC) for "similar" development at the appeal property, Ref 20/01841/PLUD, dated 21 July 2020. From an examination of all the drawings provided, the appeal scheme before me and the previously granted LDC are essentially the same and the differences between the schemes are immaterial in respect of the specific dispute between the main parties in this case.
4. Accordingly, the Council's reasons for not resisting the previous LDC should equally apply to the LDC appeal scheme before me. The Council has indicated that the previous LDC should have been refused. Yet there is no evidence the previous LDC has been revoked and so it remains in force and, in accordance with section 191(6) of the 1990 Act, it shall be conclusively presumed. There is no evidence of any material change in circumstances since the previous LDC was granted by the Council, to justify the Council's change in approach.
5. Moreover, from the information provided, the Council has granted LDCs for other hip-to-gable and rear dormer extensions elsewhere, where the eaves were neither maintained nor reinstated and it has not been explained why a

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

different approach should now be applied to the appeal property. A specific example the applicant has drawn my attention to is that of 7 Greenfield Gardens, also in Petts Wood, Ref 17/01868/PLUD, from June 2017. I have not been provided with any satisfactory explanation for the change in approach by the Council.

6. The applicant states that local ward councillors 'called-in' the LDC application to committee, the implication being that this resulted in a significant loss of time in determination of the application and appeal proceedings. According to the Council, councillors may request a "relevant" application be taken to committee if they have made a valid request, in time and have a reasonable and material planning ground upon which to make the request.
7. I have not been provided with any copy of the relevant scheme of delegation to know what authority the planning committee in this case has or whether the LDC application is a "relevant" application for its purposes. But the only reason for the call-in, provided to me for the purposes of this costs application, was because there was another application called-in for the same property. Nothing has been provided to satisfy me that this is a reasonable and material planning ground for the call-in, to justify the consequential effect on the time taken by the Council to consider the application, or that this is a proper explanation² for the Council's failure to give notice of its decision within the prescribed period.
8. According to the applicant, a failure by the Council to communicate effectively and engage with the appellant with a positive attitude has resulted in the appellant incurring the unnecessary cost of seeking professional legal advice and preparing their appeal statement. It is clear from the Council's published committee report, dated 16 September 2021, that the Council's case officer had assessed the LDC application and found the proposal to be permitted development. However, their report was deferred because, according to the Council, 'technical details' and measurements on site needed to be checked.
9. But the above is not consistent with the correspondence I have been provided with, between the Council and the appellant, where it appears the only apparent reason for the deferral was to check measurements on site. As such, the appellant did not know about the Council's concern regarding Schedule 2, Part 1, Class B, Condition B.2.(b)(i)(aa) of The Town and Country Planning (General Permitted Development) (England) Order 2015. Based on the information provided, this concern was only communicated to the appellant when he telephoned the Council on 3 November 2021, long after a decision on the application was due, and the Council's specific reason for contesting the appeal was only communicated to the appellant via the Council's submission of its statement of case.
10. Based on correspondence provided, to save unnecessary cost to all parties, the applicant offered to withdraw the appeal and resolve the matter without letting the appeal progress, if the Council was prepared to engage with him and confirm that it would issue a certificate of lawfulness without the application being presented at a planning committee. But based on the information provided, no one at the Council agreed to any of the applicant's requests for a discussion of the case.

² Appeals - Paragraph: 048 Reference ID: 16-048-20140306

11. In light of the Council's assessment of previous similar LDC applications, what was said in the Council's published committee report and the "ambiguity" identified by the Council in respect of Condition B.2.(b)(i)(aa), I am of the view that a discussion between the main parties could have enabled the appeal to be avoided altogether³. But the correspondence provided indicates a lack of cooperation⁴ on the part of the Council in this regard and not the kind of helpful⁵ approach envisaged by the PPG.
12. For the LDC application, the applicant states that the Council has unlawfully taken into account the views and opinion of a third party on planning merits. I am satisfied this is not the case, as it is clear that the objections of the third party in question extend far beyond the single dispute between the main parties, relating to Condition B.2.(b)(i)(aa). Moreover, there is no reason why a third party should not comment on matters relating to lawfulness, notwithstanding that I have not agreed with them in this case and third parties may not generally be familiar with lawfulness to be able to comment in a way which is relevant.
13. Taking all of the above into account, 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.
14. The applicant's comments on the Council's rebuttal to the costs application draws on examples of unreasonable behaviour from the PPG which were not set out in the costs application. As such, they were not before the Council when it responded to the costs application. However, as I am awarding full costs on the basis of the costs application dated 18 November 2021 anyway, I do not need to address any new points raised by the applicant's comments on the Council's rebuttal.

Costs Order

15. 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

³ Appeals - Paragraph: 048 Reference ID: 16-048-20140306

⁴ Appeals - Paragraph: 047 Reference ID: 16-047-20140306

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