
Costs Decision

Hearing Held on 24 January 2023

Site visit made on 24 January 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Costs application in relation to Appeal Ref: APP/G5180/W/21/3279166 Rosedale, Hockenden Lane, Swanley BR8 7QN

- 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 Crimea Jones for a full award of costs against the Council of the London Borough of Bromley.
 - The hearing was in connection with an appeal against the refusal planning permission for use of land for stationing residential caravans to provide 3 gypsy and traveller pitches with associated works (hardstanding, fencing, septic tank and landscaping).
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Decision

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

The submissions for Mr Crimea Jones

2. The submission was made in writing in advance of the Hearing. The applicant considers the Council in refusing the application on highways grounds is manifestly unreasonable since the access is pre-existing and authorised by the Council. This is on the basis that he would have to appeal on this ground and therefore instruct his highways expert to produce evidence to rebut the Council's reason for refusal. Despite raising this matter and advising that a costs application may be made, the Council did not withdraw its reason for refusal until later in the appeal process. In addition, the provision of sight lines could also be dealt with through a planning condition.
3. Additionally, the appeal site is allocated for the proposed use and the evidence base specifically considers it can accommodate 3 pitches which is what has been applied for. Refusal in these circumstances was manifestly unreasonable. The Members of the Council in their deliberations, erroneously raised the matter of the Green Belt. This is also unreasonable.

The response by Council of the London Borough of Bromley

4. The Council responded in writing. On receipt of the appeal, it reviewed its grounds of refusal on the basis of the additional evidence contained within the applicant's statement of case. It amended its first reason for refusal to remove reference to the justification of need and reference to highway safety. Members, in initially refusing the application, had reasonable and justifiable concerns. The Council exercised its duty in a reasonable manner. At the Hearing, the Council added that it was not unusual for a highway statement to

be included at the application stage which did not happen in this case, therefore producing one at appeal stage was not unnecessary.

Reasons

5. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
6. The PPG advises at paragraph 49¹ the types of behaviour that might give rise to an award of costs against a local planning authority on substantive grounds which relate to the issues arising from the merits of the appeal. This includes 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; failing to substantiate reasons for refusal; making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; refusing permission on a ground capable of being dealt with by conditions; and failing to review their case, as part of an ongoing process of sensible case management.
7. In this case, the application that is subject to appeal was determined by the Council's Planning Committee, contrary to the advice of officers to approve it. The Committee refused the scheme on the grounds that the need for additional gypsy and traveller pitches in the appeal site location had not been justified, the increase in the number of pitches would be overdevelopment and harmful to the amenities of neighbouring residential properties, including by reason of visual impacts and that the proposal would be harmful to highway safety.
8. The site had been allocated under Policy 12 of the Bromley Local Plan 2019 (the LP) which states that the Council will seek to meet the identified need for provision of sites for Travellers within allocated Traveller sites. The Council's officer informed the Planning Committee that the site had been allocated as a gypsy and traveller site in the LP and that it had also been identified to provide two further pitches and therefore, the proposed development would be an appropriate use of the land in planning terms. The Committee members, in rejecting the scheme on the basis of the need having not been justified, made a decision that was therefore inconsistent with that allocation within the LP.
9. I appreciate that, after the appeal had been lodged, the Committee agreed that it would no longer pursue that ground for refusal. However, it was unreasonable of the Council to refuse the scheme on this basis in the first place given that the LP had already established the need and that this would be met through allocated sites.
10. The Council has sought to justify its retraction of this part of the reason for refusal on the basis that the applicant had not provided details of the current occupants of the site within the planning application information. However, the application form clearly states that the proposal was to provide three gypsy and traveller pitches. This additional information pertaining to actual occupants of the site does not, in my view, materially alter the information available to the Committee at the time it made its original decision. Thus, I find that the Council has behaved unreasonably.

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

11. In respect of highway safety matters, the highway officer did not object to the scheme subject to the provision of sightlines which could be secured by a planning condition. Members disagreed with the conclusions of the highway officer and rejected the scheme on this basis. Following the refusal, the applicant contacted the Council requesting that this reason for refusal be withdrawn on the basis that it was unreasonable given that the site was already in use. As the Council did not withdraw this reason at that time, the applicant had to provide highways evidence to support the appeal. The Council subsequently went on to withdraw this reason for refusal on receipt of the highways evidence.
12. I recognise that members were entitled to reach a different conclusion to officers. However, the comments made related to the narrowness of the lane, increased traffic and a general comment about inadequate sightlines. However, in view of the access being pre-existing and the conclusions of the highway officer at the application stage, I find that these amount to both vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and a failure to substantiate the reason for refusal. Moreover, the applicant offered the Council the opportunity to avoid making a costs application in relation to this matter which was not taken up by the Council. This amounts to unreasonable behaviour by the Council.
13. The highway officer requested that appropriate sight lines be secured through the imposition of a condition which demonstrates that this matter could be addressed in this way. In rejecting the scheme, rather than seeking to impose a suitable condition to secure the required visibility, this adds to my conclusion that the Council has behaved unreasonably in respect of highways matters.
14. I recognise that in some cases, as asserted by the Council at the Hearing, applications are often accompanied by a highway statement or evidence, but I am not persuaded by this argument in this case due to the access being pre-existing and the modest increase in the intensity of the use.
15. I turn now to the remaining reason for refusal in relation to the overdevelopment of the site which would be harmful to the visual amenities of neighbouring residential properties, including by reason of visual impact.
16. It will be seen from my decision that I have not agreed with the Council that this would be a form of overdevelopment, particularly in view of the site having been allocated for the quantum of development proposed. Whilst I have accepted that certain aspects of the scheme would cause some harm to character and appearance, I have also concluded that these matters could be dealt with by a suitably worded condition. The Council could have imposed this at the application stage.
17. I note the reference to the Green Belt by Members but this did not ultimately form part of the reason for refusal, the applicant has not therefore had to spend time or effort in defending that.
18. I appreciate that the Council did review its case during the course of the appeal, thereby narrowing the matters on appeal which demonstrates on-going case management. However, the matters upon which the Council originally refused the application should not have been reasons for refusal in the first place as they were either in accordance with the LP or could be conditioned.

19. For the above reasons, I 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

20. 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 Crimea Jones, the full costs of the appeal proceedings described in the heading of this decision.
21. 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.

Rachael Pipkin

INSPECTOR