



Costs Decision

Site visit made on 6 October 2022

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2023

Costs application in relation to Appeal Ref: APP/G5180/W/21/3285323 21 Alexandra Road, Biggin Hill TN16 3NZ

- 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 Turnbull Land 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 give notice within the prescribed period of a decision on an application for planning permission.
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Decision

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

Reasons

2. Planning Practice Guidance states 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. Unreasonable behaviour may be procedural, relating to the process, or substantive, relating to issues arising from the merits of the appeal.
3. In this case the application is made on both procedural grounds, alleging a lack of co-operation, and on substantive grounds. It is convenient to deal with the latter grounds first.
4. The Council alleged that the proposal would be harmful to the character and appearance of the area. The statement of case includes the following:

"The surrounding area in Alexandra Road has a mix of single storey and two storey dwellings with the majority being modest sized bungalows and chalet style bungalows set within fairly wide plots."
5. To my mind that is not an accurate characterisation of the area. It is true to say that the immediately adjoining properties fronting Alexandra Road are bungalows, some with roof conversions. However, as I have noted in my appeal decision, the built form in the area is considerably more varied than this statement suggests.
6. Although the Council's statement reports the changes made to the previous scheme, it does not explain the extent to which those changes resolve (or do not resolve) the previous reason for refusal. The Council states that:

"Although the proposed dwellings would now be only two storeys in height compared with three storeys in the refused scheme, and would have a reduced

roof height. The height to the eaves would still exceed that of the neighbouring properties, resulting in an incongruous appearance within the street scene and out of character with the neighbouring bungalows. Furthermore the proposed dwellings would be between 1.7 - 2.3m higher than the adjacent dwellings." (underlining added)

7. The implication is that if the eaves height of the proposal were to be any higher than that of the bungalows on either side, that would be so incongruous as to warrant refusal. In my view that is not a credible proposition in the context of the varied built form found in this locality.
8. The Council also alleges impacts on the living conditions of the occupiers of No 19a Alexandra Road, through loss of outlook and "overshadowing". As discussed in my appeal decision, the question of overshadowing does not arise in relation to the front-facing window at No 19a. For the purposes of this costs decision I have assumed that the Council is seeking to argue that there would be an unacceptable loss of daylight to this window.
9. The appellant's grounds of appeal addressed this point, by reference to a notional line from the window in question at an angle of 45 degrees to the front elevation of the property. Although the "45 degree rule", as it is sometimes called, does not appear to feature in any guidance specific to Bromley¹, it is widely used and understood as a rule of thumb in this sort of case, as demonstrated in the appellants grounds of appeal. In the absence of any further relevant considerations, none of which were identified here, compliance with the 45 degree rule would be a clear indication that there would not be harmful impacts on outlook or daylight. The Council's statement did not engage with this evidence, nor did it provide any contrary evidence other than an assertion of harm.
10. The Council stated that there would only be a 19m back-to-back distance within the appeal scheme, resulting in overlooking. The appellant stated that:

"The proposed development will provide a general separation distance of 20m between facing windows. In most cases the internal viewing points from within the homes will be 21m separation or over. This meets general good practice design guidance, although there is no local formal policy dimension or guidance in Bromley."
11. Whilst the Council's statement referred to the changes in levels within the site, it did not explain how that affected the separation distance that would be needed. The Council's statement did not address the appellant's key point, which was that the separation distance² would meet general good practice guidance and would not breach any locally defined policy or guidance.
12. My overall assessment is that the Council failed to give proper consideration to the changes that had been made to the previous scheme. It did not engage with the evidence provided by the appellant. There were no formal reasons for refusal because the application was not determined. However, the assertions of harm set out in the Council's statement were vague, generalised and unsupported by evidence. This amounted to unreasonable behaviour.

¹ No such guidance specific to Bromley was identified by the parties

² From my reading of the plans the appellant's dimension of 20m appears more accurate than the Council's dimension of 19m. However, my decision does not turn on this detail.

13. In view of my finding on the substantive grounds for the application, it is not necessary for me to comment further on the procedural grounds.
14. I conclude that the Council has behaved unreasonably by maintaining objections to the proposal which were unsupported by evidence. This caused the appellant to incur unnecessary expense in the appeal process. The conditions for an award of costs have been met.

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 Turnbull Land 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.
16. 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.

David Prentis

Inspector