



Costs Decision

Site visit made on 27 January 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Costs application in relation to Appeal Ref: APP/G5180/D/22/3302268 Bethune, Cudham Lane South, Cudham, Sevenoaks TN14 7QA

- 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 & Mrs D Perrotton for a full award of costs against the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for the erection of single storey rear and side extension and front porch, and conversion of original linked garage to provide habitable accommodation without complying with a condition attached to planning permission Ref DC/20/03812/FULL6, dated 29 April 2021.
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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 PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations
4. The applicant seeks a full award of costs on the basis that the Council's behaviour in refusing the application was unreasonable.
5. Having regard to paragraphs 147 to 149 of the Framework, the Council in their initial assessment found that the proposed development constituted inappropriate development in the Green Belt. However, acknowledging development that could occur at the appeal property using permitted development rights as demonstrated by the applicant, the Council considered that very special circumstances existed that outweighed the harm by reason of inappropriateness.
6. Nowhere in their conclusion that very special circumstances existed did the Council state that this was also in relation to development that may be carried

out under Class E of Part 1, Schedule 2 of the General Permitted Development Order.

7. As the very special circumstances were predicated on demonstrating the size of an extension which may be constructed utilising permitted development rights a condition was justifiably imposed that removed the permitted development rights in relation to extending the property. The Council however went beyond this and removed the right under Class E that allows for buildings etc incidental to the enjoyment of a dwellinghouse, despite the fact that these were not put forward in the consideration of the existence of very special circumstances. In my decision I have found that this was not necessary, does not comply with guidance in the Framework and was therefore unreasonable.
8. The applicant subsequently applied to vary the condition to have the effect of removing the restriction that had been placed on Class E development. The Council at this point sought to introduce a new argument that the condition was necessary as removing the restriction on Class E development would result in development that would impact detrimentally on the openness of the Green Belt and undermine the very special circumstances of the original decision.
9. It is clear to me that the Council did not approach the application to vary the condition in a manner consistent with their consideration of the original application. Had they done so, they would have, however unwillingly it may have been, accepted that the very special circumstances they had identified in their original decision made no reference to the application and subsequent perceived necessity to remove Class E. Hence the Council did not afford sufficient weight to the fact that this decision existed. The Council in their own admission comment that mechanisms to prevent the implementation of permitted development schemes 'was considered sufficient in terms of being very special circumstances'. Once having identified that this constituted the very special circumstances to justify the development it was therefore not necessary, and indeed unreasonable, to go beyond this and remove Class E permitted development rights.
10. Although the Council has subsequently attempted to provide reasons for retaining the condition as part of their evidence in the appeal, they have failed to provide acceptable justification as to why such reasons materially differ from those provided when the original condition was imposed.
11. It cannot be reasonable to, in essence, introduce new reasons for imposing conditions as part of a s.73 planning application and, in any event, the Council has not reasonably substantiated its view that Class E permitted development rights need to be removed. This is in the context that very special circumstances were based on removing classes A, B, C rights and not Class E. Collectively, this amounts to unreasonable behaviour resulting in unnecessary and wasted expense for the applicant.

Conclusion

12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has been demonstrated. A full award of costs, to cover the expense incurred by the applicant in contesting the Council's reason for refusal, 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 London Borough of Bromley shall pay to Mr & Mrs D Perrotton 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.
14. The applicant is now invited to submit to 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.

A M Nilsson

INSPECTOR