



Costs Decisions

Site visit made on 28 March 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 MAY 2023

Costs application in relation to Appeal A Ref: APP/G5180/W/22/3310708 Land and Garages between 17 and 18 Gardiner Close, Orpington, Bromley BR5 3HW

- 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 Shazad Mahmood, AZ Investments Limited for a full award of costs against the London Borough of Bromley.
- The appeal was against the refusal of planning permission for demolition of existing garages and erection of 2 two storey semi-detached 4 bedroom dwellings with associated parking and cycle and refuse stores.

Costs application in relation to Appeal B Ref: APP/G5180/W/22/3310709

- 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 Shazad Mahmood, AZ Investments Limited for a full award of costs against the London Borough of Bromley.
- The appeal was against the refusal of planning permission for demolition of existing garages and erection of 2 semi-detached dwellings (1 four bedroom and 1 two bedroom) with associated parking, cycle and refuse stores, and undercroft access to existing garage at No.18 Gardiner Close.

Decisions

1. The application for an award of costs is refused for Appeal A.
2. The application for an award of costs is refused for Appeal B.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance: Appeals (PPG) advises, irrespective of the outcome of an appeal, 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. Costs cannot be claimed for the period during the determination of a planning application. However, behaviour and actions at the time of a planning application can be taken into account in consideration of whether or not costs should be awarded¹.
4. The PPG advises that where local planning authorities have exercised their duty to determine a planning application in a reasonable manner, they should not be liable for an award of costs. Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national

¹ Paragraph: 028 Reference ID: 16-28-20140306

policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application².

5. In both applications for costs, the applicant claims that the Council acted unreasonably in failing to follow the officer recommendation for approval of the planning applications; that the planning applications clearly overcame the reason for dismissal of a previous scheme at the appeal site; and that a previous appeal decision³ was a substantial material consideration that should have been taken into account by Members of the Planning Committee.
6. I have been provided with the officer reports recommending approval for the two planning applications, and the minutes of the Planning Committee. The reports detail the planning history of the site, including the previous appeal decision. The differences between the planning applications and the previously dismissed scheme are clearly articulated in those reports, with detailed references to the previous appeal decision. The minutes include a reference to the previous appeal decision. I am therefore satisfied that members of the committee were provided with sufficient detail in relation to the previous appeal, and that they took account of the previous appeal decision and the reason for dismissal.
7. However, Members of a Planning Committee are not duty bound to follow the recommendations and/or advice of their professional officers. The officer reports refer to comments made by interested parties, including concerns that the measures proposed to address privacy concerns could be easily undone in the future. The minutes include a reference to the appropriateness of the imposition of planning conditions. The committee articulated their reasons for refusal with reference to development plan policies. The Council has provided a statement of case for the appeals to substantiate their refusals.
8. Furthermore, there is little evidence before me to suggest that the previous inspector considered any proposed privacy screening measures such as those in the schemes before me.
9. Consequently, I find that the Council did not behave unreasonably with respect to procedural matters in relation to the appeals nor in relation to the substance of the matters under the appeals. As such, the applicant has not incurred unnecessary or wasted expense.

Conclusion

10. For the reasons above, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not occurred and an award of costs is not warranted.

J Moore

INSPECTOR

² Paragraph 050 Reference ID: 16-050-20140306

³ APP/G5180/W/21/3271857