



Costs Decision

Site visit made on 1 August 2023

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2023

Costs application in relation to Appeal Ref: APP/G5180/W/22/3311474 9 Bonar Place, Chislehurst BR7 5RJ

- 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 Albermarle Bonar Ltd for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for demolition of existing family dwelling and construction of three new single family dwellings.
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Decision

1. The application for costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 sets out that parties in planning appeals normally meet their own expenses. Additionally, the Guidance is clear that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Costs cannot be claimed for the period during the determination of the application, albeit behaviour and actions at the time of the application can be taken into account in the consideration of whether or not costs should be awarded. Examples of unreasonable behaviour by local planning authorities 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; and persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. Other types of behaviour that may result in costs being awarded include where there has been a lack of co-operation between the local planning authority and the other party.
4. In summary, the claim for costs stems from the length of time it took for the Council to determine the application, the failure to properly evaluate the application having regard to the merits of the scheme and the previous appeal decision, and the lack of contact from the Council to discuss the merits of the scheme.
5. A previous appeal¹ for the demolition of existing family dwelling and construction of three new single family dwellings was dismissed at the site in

¹ APP/G5180/W/21/3271500

October 2021. The Inspector found that the scale and footprint of the building would have a harmful effect on the character and appearance of the surroundings. The applicant considers that this issue had been adequately addressed in their re-submission of the planning application. However, it will be seen from my decision that I have found harm to the character and appearance of the surroundings. As such, there were sufficient grounds for refusing planning permission due to the conflict with the development plan policies. Consequently, the appeal could not have been avoided altogether.

6. The reason for refusal set out in the decision notice is precise, specific and relevant to the application. The reason has been adequately substantiated by the Council in the delegated officer's report and the appeal statement. Furthermore, both the officer's report and the appeal statement make clear reference to the previous appeal having regard to the previous Inspectors findings. Accordingly, I find that the Council did properly evaluate the application and considered the merits of the scheme giving sufficient weight to the previous appeal decision.
7. I understand that the Council sent the applicant various e-mails explaining the reasoning for the delays. However, even allowing for mitigating circumstances in relation to staff shortages, staff sickness and high caseloads, the delay caused by the Council's failure to determine the application within the statutory timeframe was excessive and constitutes unreasonable behaviour. However, the indication is that had the decision been made in a timelier fashion it is likely that the applicant would have still had to appeal in any event.
8. I appreciate there was less than a month between the Council confirming that the application had been re-allocated to another case officer and the determination of the application, and that during this time the case officer was on annual leave. However, there is no substantive evidence before me to suggest the decision was rushed with a lack of understanding of the appeal site, the site history and the proposed development. Furthermore, I am not persuaded by the evidence that had the Council engaged with the applicant to discuss the merits of the scheme prior to the determination of the application, it would have resulted in a more favourable decision.

Conclusion

9. On the basis of the evidence before me, I conclude that it has not been demonstrated that the Council's unreasonable behaviour caused unnecessary or wasted expense in so far as an award of costs could be justified. I therefore determine that the costs application should fail, and an award of costs is not warranted.

L Reid

INSPECTOR