



Costs Decision

Site visit made on 10 August 2023

by R Lawrence MRTPI, BSc (hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Costs application in relation to Appeal Ref: APP/G5180/D/23/3319225 16A Cameron Road, Bromley BR2 9AR

- 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 - Lonsdale for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission to increase the height of the roof to the existing garage by 1530mm and extend to the side by 8sqm to allow for the existing 1st floor to be used.
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Decision

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

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 appellant's application for costs alleges unreasonable behaviour on two counts:
 - a) The second reason for refusal, and the relevant policy within, are irrelevant to the appeal scheme
 - b) The appellant submits that the Council has acted unreasonably by declining to provide pre-application advice and failing to negotiate ahead of refusing the application.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. Policy 9, the sole policy listed in the second refusal reason, relates to Residential Conversions and seeks to control the conversion of single dwellings into two or more self-contained residential (or non-residential) units. As the proposal relates to an extension to an existing residential outbuilding, rather than the conversion of a dwelling, the relevance of the policy to the appeal scheme, and any conflict with its requirements, has not been substantiated.

6. The Council's reasoning for the refusal reason is contained within the "Design" section of the officer's report. The reasoning makes reference to the size of the extended building having potential to be used as a separate residential unit, however, there is no explanation as to why this would conflict with adopted development plan policies. Furthermore, the reasoning appears speculative and unrelated to the plans which clearly indicate an ancillary building. Harm resulting from the size of the building is addressed under a separate reason for refusal.
7. As such, having regard to the provisions of the development plan and other relevant considerations, this second reason for refusal is not justified and the identified conflict with the development plan has not been substantiated, contrary to the basic guidance in the PPG. The appellant has therefore been faced with the unnecessary expense of defending an appeal for a second reason.
8. Turning to ground b, it is clear that there were extenuating circumstances which led to the Council's decision to suspend their pre-application service for small scale developments. There is no statutory requirement for the Council to provide pre-application advice, although the framework includes a duty upon Local Planning Authorities to seek to work proactively with applicants. Whilst I recognise that the non-availability of pre-application advice has caused frustration to the appellants, the decision to suspend the service, together with the reasons, were clearly communicated. Setting aside reason for refusal 2, which I have commented on above, the officer report sets out the relevant planning policies and provides clear reasoning to substantiate the refusal.
9. Furthermore, whilst it would be reasonable to assume that the Council's reasons for refusing the application might have been highlighted as part of any pre-application advice, this is not certain, and in any event, I cannot be certain as to whether the applicant would have successfully addressed the issues raised. As such, even in the event that pre-application advice had been provided, this would not necessarily have avoided the submission of an appeal.
10. The appellant considers that negotiations should have taken place during the application to seek to resolve identified issues with the application. I note that the Council had offered to work with the applicant to resolve any identified issues that were capable of being resolved. I understand that the appellant considers the issues raised by the Council were capable of being addressed, however, this was ultimately a matter of judgement for the Council's officers to make. I therefore consider that an award of costs on the basis of the lack of pre-application advice, and negotiations during the application, is not justified. However, these factors do not alter my conclusions in respect of ground a.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 - Lonsdale, the costs of the appeal proceedings described in the heading of this decision, limited to

those costs incurred in defence of the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. 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.

R Lawrence

INSPECTOR