



Costs Decision

Site visit made on 15 September 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2023

Costs application in relation to Appeal Ref: APP/G5180/W/23/3319266 Land South of The Manor, New Barn Lane, Cudham, Bromley TN16 2HT

- 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 Divami Ltd for a full award of costs against London Borough of Bromley.
 - The appeal was against the refusal of planning permission for an alteration of an existing building to be used as a family home reducing its original footprint and volume whilst maintaining the architectural and conservational language of the surrounding building and natural habitat. This is a small-scale self-build project. We are proposing to significantly reduce footprint and volume to provide front garden (which will also provide parking space) and rear garden (external amenity space), both of which will be enclosed by repairing existing metal wire fencing and repositioning part of it to enclose front garden. This will be a sustainable development where we will incorporate low carbon measures here including installation of solar panels, air heat pumps, ground heat extraction pumps etc and provide electric charging points for electric assisted cycles, electric scooters, electric cars etc. We will exclusively use electric vehicles or pedal cycles on this site.
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Decision

1. The application for an award of 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 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 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.
4. The applicant considers that the Council acted unreasonably in refusing planning permission. In my decision, I have concurred with the Council's approach to considering the proposed development against the relevant sections of the National Planning Policy Framework (2023) (the Framework). I have found the Council's assessment to be well reasoned and argued. Although I have disagreed with certain elements of the Council's assessment, these are in relation to matters of planning judgement.

5. The Council's consideration of the relevant case law is set out in their assessment. Although the applicant has reasonably outlined their interpretation, I find that the Council's approach was not unreasonable.
6. The applicant considers that the Council is heavily influenced by their opposition to any development in the Green Belt. The Government attaches great importance to Green Belts, with a limited number of exceptions being held to be not inappropriate development. Given the planning history on the site, it is somewhat understandable that the applicant may perceive a reticence to development being permitted on the site. However, given the importance of Green Belts this is not surprising, and I do not find unreasonable behaviour from the Council in this regard.
7. The applicant alleges that as the refusal of planning permission does not cost the Council anything, they have left it to the Inspector to overturn their decision. I find little merit in the argument. Equally, granting planning permission does not cost the Council anything, and defending their decisions at planning appeals brings its own cost in terms of resources and Councils are at risk of an award of costs if they are found to have acted unreasonably. There is nothing in this appeal to suggest that the Council did anything other than determine the application in accordance with the development plan, having regard to other material considerations, as is their statutory duty. In this case the Council exercised their planning judgement and in light of the arguments put forward, I do not consider they acted unreasonably. There is therefore no case that the decision amounted to Wednesbury Unreasonableness as alleged.
8. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such I find that the applicant was not put to unnecessary or wasted expense. I find nothing to suggest that a decision was not reached on the basis of the planning merits of the proposed development.

Conclusion

9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and a full award of costs is not warranted.

A M Nilsson

INSPECTOR