



Costs Decision

Site visit made on 23 January 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2024

Costs application in relation to Appeal Ref: APP/G5180/W/23/3325268 121-125 Elmers End Road, Beckenham, Kent BR3 4SY

- 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 K Taylor for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission described as “part demolition of existing building 125 Elmers End Road. Addition of ground floor commercial unit at 123 Elmers End Road with residential units to first floor and second floor. Erection of new roof to 121 and conversion to residential use of roof. Erection of residential units to first floor and second floor of 125 Elmers End Road.”
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Decision

1. The application for an award of costs is dismissed.

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 applicant seeks an award of costs, relating to requiring the services of a planning consultant for the preparation and submission of the appeal. The applicant contends the appeal is unnecessary had the Council engaged with them prior to submitting their application and/or during its consideration. The Council disputes the costs claim.
4. Paragraphs 39, 40 and 41 of the National Planning Policy Framework (the Framework) strongly encourages early engagement with the Local Planning Authority to work proactively and resolve as many potential issues as possible.
5. The applicant made a pre-application enquiry said to be valid in March 2022 in relation to the appeal proposal, but they did not receive any such advice. Instead, a refund was offered a couple of months or so after it was validated. The Council advised that due to staff shortages, a planning application can be submitted and there could be an opportunity to negotiate during the life of that application, as an alternative to the pre-application advice.
6. At a late stage of the statutory determination period for the planning application the applicant submitted, there were informed in an email from the Council of the issues associated with their proposal. The Council invited the applicant to withdraw the application and seek pre-application advice in response to the issues raised by them. No opportunity was explicitly provided to discuss or negotiate changes, as previously outlined by the Council.

Notwithstanding the planning history on the appeal site, including the earlier appeal decision,¹ the Council did not afford time for the appellant to consider meaningful amendments to the scheme as previously advised. Moreover, the reasons why their initial pre-application advice was not available were not of the applicant's making.

7. It is noted that pre-application advice is not a statutory service, and whether such engagement could have resulted in any meaningful changes to the proposal that could have addressed any of the reasons for refusal is not clear. Nevertheless, in view of the earlier offer to negotiate instead of providing pre-application advice, the failure of the Council to fully engage with the applicant to try and at least reduce the areas in conflict, despite being given several opportunities, constitutes unreasonable behaviour in this case.
8. The application was refused for three reasons relating to its effect upon the character and appearance of the area, car parking and highway safety; and whether future occupiers would have satisfactory living conditions. In my appeal decision I found harm from all three of these main issues and the appeal has been dismissed.
9. Whilst noting that planning permission was subsequently granted in relation to No's 121 and 123, and the applicant has indicated that some changes to the proposal could be made, such as internal layout amendments of individual flats to address size requirements, outlook and privacy concerns, these would not have addressed the issue of future living conditions completely. The effect upon the character and appearance of the area in respect of the appearance of No. 125, would also have likely required significant changes. The parking issues also would have required detailed justification and/or changes to the layout. For these reasons, based on the appeal scheme before me, an appeal could not have been avoided, nor could the costs associated with making that appeal.
10. I therefore find that although the Council's lack of engagement has been unreasonable, it is not clear the applicant would have made changes to address the Council's concerns. In view of the above, I do not find that making the appeal has caused the applicant unnecessary expense.
11. Consequently, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated, and an award of costs is not justified.

A Hunter

INSPECTOR

¹ Ref: APP/G5180/W/20/3264344