



Costs Decision

Site visit made on 7 February 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2024

Woodlands Kennels & Cattery, Grays Road, Westerham TN16 2HU

Costs application in relation to Appeal Ref: APP/G5180/W/23/3326041

- 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 Pan Saladas for a partial award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for the demolition of existing kennel, cattery and outbuilding and the erection of two single storey three bedroom dwellings with associated parking and bin stores.
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Decision

1. The application for a partial award of costs is allowed 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. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by a local planning authority which may give rise to a procedural award of costs include withdrawal of any reason for refusal. The applicant is applying for a partial award of costs based on the late withdrawal of the third reason for refusal, relating to vehicular movements to and from the site.
4. The chronology of events and the extent of discussion between the main parties was not clear from the initial submissions provided and I therefore sought further information from both. I have taken these submissions into account in reaching my decision.
5. A Junction Visibility Report dated August 2019, was submitted in support of the planning application. It states the speed limit of Grays Road to be 30mph. The response from the Council's Highway Engineer does not appear to endorse this position.
6. Whilst the Highway Engineer's response confirms that the arrangements shown on the submitted drawing were correct for a road with a speed limit of 30mph, it goes on to note that a road such as Grays Road would normally have a speed limit of 40mph. Therefore, various additional pieces of information were sought, including a speed survey and sightlines for 40mph or whatever the speed of the road as established by the survey.

7. The agent responded to these observations querying the need for a speed survey. A revised drawing showing sight lines of 2.4 x 65.5m in both directions from the new access was submitted on 4 June 2021. An email from the Highway Engineer dated 7 June 2021, confirms to the Planning Officer that the visibility splays on both sides should be touching the edge of the carriageway. The agent appears to have been made aware of this comment on 23 June 2021. There is no further comment or observation on this or any of the other highways aspects of the case.
8. Having seen the correspondence and submissions, it seems evident to me that in June 2021 there was clearly disagreement/confusion over the speed limit of Grays Road. Furthermore, it is not clear to what extent the revised sightlines drawing overcame the previous highways comments and thus whether there remained an on-going highways objection or requirement for additional information.
9. It is also clear from the agent's submissions at that time that they were of the opinion that the revised sightlines addressed the concerns raised by the Highway Engineer. There does not appear to have been any communication from the Council to the agent indicating that there remained any on-going requirements for further information in relation to this matter. Indeed, over the next 21 or so months it appears that matters generally were left unresolved.
10. In preparing the delegated report in March 2023, it does not appear as though the highways situation was reviewed. The delegated report contained only a brief outline of the Highway Engineer's comments from April 2021, which themselves contained a quote from comments that were made in 2018. There is nothing before me to suggest that there was any internal communication between the planning officers and the highways engineers, if only to clarify whether the revised sightlines drawing had changed the situation or whether the initial requirements for additional information remained.
11. No doubt had discussions taken place, the change to the speed limit along Grays Road, which was occurring at a similar time to the delegated report being prepared, may well have been raised. Thus, the review of the situation that seems to have been carried out by the Council on the highway's issues post decision, could have occurred prior to the decision being made. Therefore, it seems to me that it was the delay in the Council making a decision on the application and then the subsequent absence of any reviews of the situation which principally contributed to the reason for refusal being advanced and then having to be withdrawn late on in the process.
12. I am mindful of the fact that these events unfolded at a difficult time for everyone, and staffing issues were a common concern during that period. Nevertheless, this does not justify the extent of the delays that occurred nor how the Council subsequently did or didn't deal with the matter, which I find directly led to the late withdrawal of the reason for refusal. Having reviewed the situation, it is not clear what the applicant could have done between June 2021 and June 2023 to have avoided having to deal with the matter of vehicular movements at the appeal stage.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and this unreasonable behaviour has directly caused the applicant to incur unnecessary expense in the appeal process and that a partial award of costs is justified.

Costs Order

14. 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 P Saladas, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in connection with the Council's third reason for refusal, relating to vehicular movements to and from the site; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. 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.

Stewart Glassar

INSPECTOR