



Costs Decision

Site visit made on 1 October 2024

by C Livingstone MA(SocSci) (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

**Costs application in relation to Appeal Ref: APP/G5180/D/24/3349643
Little Orchard, Barnet Wood Road, Hayes, Bromley BR2 8HJ**

- 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 Mark Rutherford 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 part one/two storey extension.
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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. In claiming costs of the appeal, the applicant submits that the Council has acted unreasonably. It is asserted that the Council failed to give appropriate consideration to a number of factors in their assessment of the proposal, including a previous approval for a larger extension to the dwellinghouse, the potential to extend the property under permitted development legislation and the merits of the proposed design.
4. Planning Practice Guidance gives further advice as to when local planning authorities will be at risk of an award being made against them. Examples cited as unreasonable behaviour on a substantive basis refer to preventing or delaying development which should clearly be permitted. Of the examples listed as unreasonable behaviour on procedural grounds, the applicant asserts that the Council acted unreasonably when determining the planning application in the following ways:
 - Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - acting contrary to, or not following, well-established case law;
 - not determining similar cases in a consistent manner; and

- failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.
5. The applicant also suggests that the Council should have been consistent with its pre-application advice and recommended permission. They consider that instead of refusing the appeal the Council should have invited a revised planning application.
 6. Within the Delegated Decision the Council provided a clear and reasoned justification for its decision, which is based on policies within its current development plan. As the proposal is contrary to the development plan, the proposal does not constitute development that 'should clearly be permitted'. A previously approved scheme dating from 2007¹, that was unimplemented, shares similarities with the appeal proposal. However, as this planning application was determined prior to the current development plan, around 17 years ago, it is not extant or recently expired.
 7. There is no substantive evidence before me to demonstrate that the Council have acted contrary to or failed to follow well-established case law or have not determined similar cases in a consistent manner. While the site may benefit from permitted development rights, it is not clear to me that the alternative scheme suggested would be permitted development; limiting the weight that can be attach to it as a fallback position.
 8. Full details of any pre-application advice provided by the Council has not been provided. Advice provided by the local authority cannot pre-empt the democratic decision making process or a particular outcome. As the proposal is contrary to the development plan, it is not clear that a revised scheme would achieve an alternative outcome in this instance.
 9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Livingstone

INSPECTOR

¹ 07/02106/FULL6