



Costs Decision

Site visit made on 9 October 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Costs application in relation to Appeal Ref: APP/G5180/W/24/3337320 Summerfield, 3 Frelands Road, Bromley, BR1 3AG

- 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 M Crane (Height Airspace Ltd) for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the construction of one additional storey above the existing building to provide three no. residential flats (Class C3) with associated refuse and cycle parking.
-

Decision

1. The application for an award of costs is partially 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. The application for an award of costs is made on substantive grounds. It is highlighted that the Committee of the Council determining the application decided not to accept the recommendations of its Officers to grant permission. It is argued that the Council has relied upon vague and generalised or inaccurate assertions about the proposal's impact which are unsupported by objective analysis and has failed to substantiate the reason for refusal on appeal. The PPG indicates that in such circumstances costs may be awarded against a Council.
4. Whilst the Committee of the Council responsible for determining planning applications is not required to accept the recommendations of its Officers, in circumstances where the professional advice of Officers is not followed, it is reasonable to expect the Council to be able to produce relevant evidence on appeal to support the decision.
5. The application had a single reason for refusal which covered both the impact of the proposal on the character and appearance of the area and the living conditions of nearby residents.
6. As detailed in my appeal decision, I have found that the proposal would be acceptable in terms of its impact on the character and appearance of the area. However, I recognise that in such matters, the consideration of planning

applications and appeals can involve matters that are finely balanced and are primarily a matter of judgement.

7. The Council's statement of case provides a description of the scale and type of properties in the area. It then sets out why, in this context, they consider that the height and scale of the proposal is not appropriate. For example, it highlights the current consistency in height with the buildings to the north of the site, concluding that the disparity that would be caused by the proposed upward extension would make it a prominent addition to the street scene. In addition, it considers that the proposal would increase the existing disparity with the houses to the south of the site to the extent it would appear over-dominant. It acknowledges that there are blocks of flats on Widmore Road but indicates why they do not consider they help to justify the proposal.
8. The Council's statement also indicates that they consider the choice of materials for the extension would be out of keeping and sets out clear reasoning for why they consider the appeal decisions referred to by the applicant are different to this appeal scheme.
9. As such, I consider that with respect to the impact of the proposal on the character and appearance of the area, the Council's appeal statement sets out substantive reasoning for why the proposal would be detrimental in this regard, even if they have not made any specific reference to the general advice provided in the Urban Design Guide Supplementary Planning Document (adopted July 2023). Moreover, the reasoning relies on comments specific to the proposal and the area in which it is situated and not on vague or generalised assertions.
10. Whilst the applicant may not agree with the Council's reasoning and conclusion, and I have come to a different conclusion in this regard, this does not mean the Council have behaved unreasonably.
11. However, with regard to the impact of the proposal on the living conditions of nearby residents the Council's appeal statement simply indicates that they have concerns in relation to outlook. It neither identifies which residents would be impacted in this respect, nor provides any objective analysis or evidence to support the assertion that the outlook of residents would be harmed. As such, it provides no evidence to substantiate this part of the reason for refusal.
12. Given this, I consider that with regard to this matter the Council have acted unreasonably. This unreasonable behaviour has resulted directly in the need to contest this part of the reason for refusal at appeal.

Conclusion

13. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the matter of the living conditions of nearby residents and a partial award of costs is therefore warranted.

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 M Crane (Height Aerospace Ltd), the costs of the appeal proceedings described in the heading of

this decision limited to those costs incurred dealing with the living conditions of nearby residents; 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 copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alison Partington

INSPECTOR