



Costs Decision

Hearing held on 22 January 2013

Site visit made on 22 January 2013

by P E Dobsen MA (Oxon) DipTP MRTPI FRGS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 February 2013

Costs application in relation to Appeal Ref: APP/G5180/A/12/2182301 76 High Street, Orpington BR6 0JQ

- 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 Churchill Retirement Living Ltd. for a full award of costs against the Council of the London Borough of Bromley.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for redevelopment to form 50 sheltered apartments for the elderly (category II type), communal facilities, access, car parking and landscaping provisions.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The gist of the submissions for Churchill Retirement Living Ltd.

2. The Council has acted in an unreasonable manner, within the meaning of the Costs Circular 3/2009. There should have been no need for the appellants to make and contest this non-determination appeal. The Council's actions have caused the appellants unnecessary and wasted expense in pursuit of it, in particular on the parking issue.
3. At no time were the Council's committee clearly advised that the appellant had undertaken considerable initial and further investigations to support its proposed on-site parking provision. This information was undertaken willingly and in a spirit of cooperation and satisfied the Council's highways officer that the proposed level of parking was appropriate for the type of development applied for (category II sheltered housing). Council members had no reasonable basis for suggesting that the parking spaces should be increased to 30, and no professional advice to that effect.
4. The Council has throughout failed to substantiate its claims over the level of on-site parking required. In general, it has shown a lack of understanding of the nature of category II sheltered housing.
5. The application was recommended for approval by the officers at both committee meetings. Paragraph B20 of the Costs Circular advises that local planning authorities are not bound to accept officer recommendations. However, if the professional and technical advice is not followed, then reasonable planning grounds for taking a contrary decision should be shown and relevant evidence produced. But this has not been forthcoming, either

prior to or even at the hearing. The additional expenditure incurred by the appellants in attending the hearing, instructing transport consultants to review the information, and produce hearing statements etc. was unnecessary and unreasonable.

6. Moreover, the Council has failed to show that the proposed development conflicts in any way with the relevant provisions of the development plan or with the National Planning Policy Framework. No evidence has been provided to demonstrate any exceptional circumstances that might justify more on-site parking than the amount shown in the application. The Council's actions did not have proper regard to para. 39 of the Framework which sets out the criteria to be taken into consideration when setting local parking requirements.
7. To conclude, the Council has acted unreasonably within the meaning of the Costs Circular, has failed to substantiate its members' view that the proposed level of parking was insufficient, and has caused the making of an unnecessary appeal with all its attendant costs to the appellants.

The gist of the response by the Council of LB Bromley

8. The application is resisted. At the first relevant committee meeting, one of the ward members (who had represented Orpington for 15 years) referred to his personal knowledge and experience of parking problems in the High Street and considered that efforts should be made to increase the extent of on-site parking to serve the development. This view was shared by other members, and the application was deferred.
9. At the second committee meeting, the application was still recommended for permission; however, members are not obliged to accept the professional and technical advice of officers (Costs circular, para. B20). Planning decisions are not just a matter of professional and technical judgements. Weight should be given to members' local knowledge and experience, which also take into account the views of the general public.

Reasons

10. Circular 3/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
11. I agree in essence with the submissions by the applicant. The applicant had submitted ample and timely evidence and information at the application stage to show that the 16 parking spaces proposed would be adequate to serve the proposed development, without causing any significant on-street parking problems or undue parking congestion in the local area. The Council had in effect either ignored or misunderstood this material, as well as its own officers' advice, and had come to a contrary decision. However, although ostensibly based on local knowledge, this decision seems not to have been backed up by anything more than vague assumptions, and brief debate in committee, rather than any reasoned or objective factual evidence or analysis.
12. No Council members appeared at the hearing. The 2 officers present were not able to support the Council's parking-related reason for contesting the appeal (i.e. the putative reason for refusal) with any substantial evidence about the alleged need more additional on-site parking (over and above the 16 spaces

proposed). Indeed, the highways officer confirmed that his professional view remained what it had been throughout – that the 16 spaces were acceptable and in accordance with the Council’s and national policies. The other officer did not disagree with that.

13. The Council’s failure to substantiate its putative reason for refusal was unreasonable within the meaning of the Costs circular, and has caused the applicant the unnecessary expense of pursuing the appeal, with all its attendant costs.
14. The other putative reason for refusal (the lack of a planning obligation concerning financial contributions towards affordable housing and health provision) was largely resolved by the time of the hearing, and a satisfactory signed and executed planning agreement was tabled at the hearing itself. Although this might have been agreed somewhat earlier, it did not take up much time at the hearing, which was largely devoted to the parking issue.

Costs Order

15. 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 Churchill Retirement Living Ltd. the costs of the appeal proceedings described in the heading of this decision.
16. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Paul Dobsen

INSPECTOR