
Costs Decision

Site visit made on 31 August 2016

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 3rd October 2016

Costs application in relation to Appeal Ref: APP/N5090/W/16/3151707 4 Clifton Gardens, Golders Green, London NW11 7EL

- 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 Joey Ben Yoav for a full award of costs against the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for a two storey rear extension. Rear dormer with 3 no rooflights to front to facilitate hip to gable loft conversion. Conversion of the property into 3 no self-contained flats.
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Decision

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

Reasons

2. 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 appellant submits that the Council has acted unreasonably in that it went against the advice of its officers without good reason and failed to substantiate the objections relating to highway safety. They have also argued that the Council refused the application on matters that were outside the control of the applicant and were thus unreasonable.
 4. Elected Members are not required to follow the advice of officers. If a different decision is reached, however, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
 5. It is accepted that the proposal would not fully meet the parking standards set out in the Council's Development Management Policies document. However, this policy also allows for situations where no parking is acceptable for residential development in 'Controlled Parking Areas' (CPZ) and the officer's report indicated that there were no concerns from highway officers relating to a lack of parking when taking the applicant's parking survey, the existing use of the property and the site's town centre location into account.
 6. Whilst the Council's appeal evidence argued the scheme would result in overspill parking, it did not identify where this overspill would be likely to occur. Generalised comments about how off-street parking can cause safety problems but these were not linked to anything specific about the development
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or known problems occurring in the vicinity of the appeal site. As a result, the Council did not produce any substantive evidence which demonstrated there would be unacceptable adverse impact on highway safety or the efficient use of the highway network in the area of the site.

7. In addition, while there was generalised criticism of the appellant's parking survey and assessment, the Council did not provide any quantitative evidence which sought to refute the appellant's survey or provide an alternative assessment of parking capacity. Instead, the Council relied on the number of residential parking permits issued to residents of Clifton Gardens. While this is one indicator of demand, it does not equate to a robust assessment of the likely or realistic increase in parking that would be generated. It also does not fully reflect parking capacity in the vicinity of the site or point to any safety or problems associated with either inconsiderate parking or the flow of traffic in the area. As a result, I find that the Council behaved unreasonably by failing to substantiate the reason for refusal and that the applicant incurred wasted expense in defending this matter.
8. The applicant has also suggested the Council has been unreasonable in referring to things outside their control. I recognise that as no off-street parking provision was being provided, the applicant would have no direct control over where the occupants of the flats would park. However, in this regard I do not think it unreasonable for the Council to give consideration to the likely parking demand and potential impact resulting from any increase in parking. As such, while I do not consider the Council provided sufficient justification for their conclusions, they did not act unreasonably in this regard.
9. Notwithstanding this, I find that unreasonable behaviour resulting in unnecessary expense has been demonstrated and that that a full award of costs is justified.

Costs Order

10. 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 London Borough of Barnet shall pay to Mr Joey Ben Yoav, the costs of the appeal proceedings described in the heading of this decision.
11. The appellant is now invited to submit to the London Borough of Barnet 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 Office is enclosed.

S J Lee

INSPECTOR