

Costs Decision

Site visit made on 19 September 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 8 November 2016

Costs application in relation to:

Appeal Ref: APP/N5090/X/16/3143649

72 Warwick Avenue, Edgware HA8 8UJ

- The application is made under the Town and Country Planning Act 1990 sections 195 and 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Yehuda Neuberger for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of a certificate of lawful use or development for: Enlargement of loft area of a residential home.
-

Decision

1. The application for an award of costs is refused.

Reasons

National guidance

2. National guidance on awards of costs is set out in *Planning Practice Guidance* [hereafter "PPG"]¹. At paragraph 028 the PPG states that in planning appeals and other planning proceedings parties normally meet their own expenses. All parties are expected to behave reasonably. The 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. Paragraph 031 states that unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the appeal process or substantive, relating to the merits of the appeal. Paragraphs 046-049 provide some examples of the types of behaviour that would be held to be unreasonable, and which may give rise to an award of costs against a local planning authority. These examples include preventing or delaying development which should clearly be permitted, failure to substantiate a reason for refusal, not following well established case law, not determining similar cases in a consistent manner and not reviewing their case promptly following the lodging of an appeal.
4. The list is not exhaustive.

¹ *Planning Practice Guidance* is a web-based resource that was launched by the Department for Communities and Local Government on 6 March 2014. It provides, among other things, national guidance on costs awards, replacing the guidance formerly provided by Circular 03/2009. Its guidance on awards of costs is found in the section titled "Appeals".

The Appellant's costs application

5. The appellant's application for costs is made on substantive grounds. The appellant argues that the Council's decision was based on a faulty legal premise. The Council were not at liberty to put a different interpretation on permitted development legislation when they had granted lawful development certificates [hereafter "LDC(s)"] for other similar developments. They had failed to accept the general principles of fairness, had not supported their appeal with evidence and had delayed development. An appeal should not have been necessary as the LDC application clearly should have been approved.

The Council's response

6. The Council says that each application falls to be determined on its own merits, that the other cases cited by the appellant are not material to the appeal case and that the appeal case was determined based on the facts of the site.

My assessment and conclusions

7. This was not a straight forward case of development which clearly qualified for an LDC. The Council was not obliged to make the same decision as (it is said) had been made on LDC applications for similar developments. Even when taking into account the principle of consistency in decision making, there were good reasons for deciding the application differently.
8. It is a matter for the parties to decide upon the extent of evidence they wish to submit in an appeal. From the refusal notice, delegated report and other appeal documents there was sufficient information to understand the Council's case. I do not criticise the Council for not submitting a statement of case. Neither do I find fault with the Council's management of its case throughout the appeal. The Council supplied its appeal questionnaire and documents on time and I cannot see that it has caused delay in the appeal process.
9. Whilst the Council has not commented specifically on the *Guildford BC v Secretary of State for Communities and Local Government* ruling, it had good reasons for refusing the LDC application and, because of this, it has not acted in a manner contrary to established case law.
10. The appeal system provides for the resolution of disputes arising from decisions taken at local level. The Council had an arguable case. It was appropriate that the unresolved issues were considered through the appeal process. I cannot see, in these circumstances, how the appeal could have been avoided.
11. For all the above reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Susan Wraith

INSPECTOR