
Costs Decision

Site visit made on 23 November 2016

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 16 December 2016

Costs application in relation to Appeal Ref: APP/N5090/W/16/3157133 Victor House, Marlborough Gardens, Whetstone, London N20 0SH

- 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 Castlewood Estates for a full award of costs against the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for alterations to the roof to include front and rear dormers windows and roof lights. Staircase extension at rear, to facilitate conversion of roofspace to form 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. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may 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.
 3. The appellant submits that the Council has acted unreasonably by introducing a new reason for refusal, Reason 1, and refusing to reconsider withdrawing reasons for refusal Nos. 1, 2 and 4 at their request. The appellant submits that the Council has acted unreasonably by refusing permission for some reasons which were based on information that was untrue and cannot be substantiated. Furthermore, it would have been possible to deal with some of the concerns raised by the imposition of conditions. It is therefore claimed that the Council has acted unreasonably and the refusal has resulted in the appellant incurring unnecessary and wasted expense in the appeal process.
 4. Paragraph 047 of PPG indicates that local planning authorities will be at risk of a procedural award of costs being made against them if they prolong proceedings by introducing a new reason for refusal or provide information that is shown to be manifestly untrue or inaccurate. Paragraph 049 of the PPG indicates that local planning authorities are at risk of a substantive award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal on appeal and/or refuse planning permission on a planning ground capable of being dealt with by conditions, and where it is concluded that suitable conditions would enable the proposed development to go ahead.
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5. Reason for refusal No 1 relates to the effect of the development on the living conditions of neighbouring occupiers, with particular regard to noise. The Council considered that the proposed layout would result in the stacking of rooms that would give rise to noise and disturbance to neighbouring residents. This matter was set out as a matter for consideration in the Council Officer's Report and it is understood that it was also set out as one of the reasons for refusal in the Council's Committee Minutes. This reason was not therefore introduced as a new reason for refusal after the Decision was issued and the Council is not obliged to reconsider its reasons for refusal as a matter of procedure. The Council did not therefore act unreasonably in relation to procedural matters.
6. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, in relation to reason for refusal No 1, the Council's Officer had advised that a planning condition could be imposed to require a sound insulation scheme to be provided and this would safeguard the living conditions of neighbouring residents. No evidence has been provided by the Council during the appeal process to clearly set out why they decided that a condition would not provide suitable mitigation and thereby address concerns in relation to stacking. Moreover, no additional evidence has been provided by the Council to substantiate their concern that the proposal would cause significant harm to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.
7. The second reason for refusal stated that the appeal proposal fails to provide refuse and recycling facilities. The proposed plans clearly indicate a new bin storage area and revised plans were negotiated during the application process to improve the access arrangements for residents to encourage the proper utilisation of these facilities. No evidence has been put forward by the Council to demonstrate why the refuse storage proposals would be inadequate and the only justification for this reason for refusal appears to rely on concerns surrounding the current practices of existing tenants in relation to the disposal of refuse, and not to the proposals put forward in this case.
8. In respect of the forth reason for refusal the application was supported by a Parking Study¹ and no objections were raised by highway officers on parking or highway safety grounds. Little evidence has been put forward by the Council to support this reason for refusal and establish that there is an existing parking problem, and if so, how this would be made worse on highway safety grounds.
9. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, refusal reasons 1, 2 and 4 have not been substantially justified. Furthermore, it can be seen by my decision that a condition would have overcome any concerns the Council had over any potential noise and disturbance as a result of the layout of the flats.
10. I therefore accept that the Council have behaved unreasonably by failing to produce evidence to substantiate reasons for refusal Nos. 1, 2 and 4 on appeal and by refusing planning permission on a planning ground capable of being dealt with by condition. The appellant has therefore been put to additional

¹ Parking Study, Prepared by Transport and Traffic Consultancy, August 2014

expense in countering the Council's position in relations to reasons for refusal Nos. 1, 2 and 4 and an award in these specific respects is justified.

Conclusion

11. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

12. 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 Barnet shall pay to Castlewood Estates, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Council of 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.

Elizabeth Pleasant

INSPECTOR