
Costs Decision

Site visit made on 3 October 2016

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 19 December 2016

Costs application in relation to Appeal Ref: APP/N5090/W/16/3149976 Church Walk House, Church Walk, Childs Hill, London NW1 2TJ

- 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 Church Walk House Property Development LLP for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for the demolition of existing building and the erection of part two, part three storey building including lower ground level to provide 35 residential units (Use Class C3), parking and landscaping.
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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 officer's recommendation in the Council's committee report was that planning permission should be granted. It is entirely within the remit of Members to come to a different view from that of its professional officers. In these circumstances, the PPG states that an authority is expected to produce relevant evidence on appeal to support its decision.
 4. In its second reason for refusal, the Council refers to the overdevelopment of the site by reason of the number of units. Although the term overdevelopment is commonly used in appeal proceedings, the Council has not specifically identified the harm that arises from this. The lack of preciseness has therefore caused the appellant to provide a broad response to the reason for refusal.
 5. The Council has sought to justify and support its second reason for refusal by referring to cumulative impacts. Councils are entitled to elaborate upon their reasons for refusal. However, the arguments and evidence put forward here cannot be seen to be connected with the reason for refusal because it is imprecise. Furthermore, in pursuing its arguments on harm arising from cumulative impacts, the Council has not been able to substantiate all of the purported individual impacts. Consequently, their conclusion that a stage has been reached where all these impacts would lead to harm has not been proven.
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6. In terms of the proposed amenity space for the development, it was unclear how the arrangement put forward, including communal areas, would adversely impact upon character and appearance of the area in any way. The Council refers to purpose and size of gardens not evident at this location but fails to explain how this would be an issue given the varied make up of gardens in the area or whether this purported impact could be resolved by planning condition. Similarly, it has not provided a proper evaluation of the impact of the development's room per hectare level given the dwelling/unit density complies with policy. In this regard, using the relevant table mechanistically is contrary to the explanatory policy text for LP Policy 3.4.
7. Turning to the extent of the frontage hard surfacing and associated vehicles, there is no assessment justifying the openness characteristic identified and therefore it cannot follow that an issue arises from this. It has been indicated that the dominant development would have an appreciable impact on the legibility of 11 Church Walk and the established character of the vicarage. However, there is no commentary on how it has taken into account the building's design, including articulation, and spacing about the development in coming to its conclusion. Its assessment is incomplete. Finally, reference has been made to the mixture of materials used on the building and the resultant impact but it is unclear why this cannot be overcome by the use of a planning condition.
8. Assessments on character and appearance can involve subjectivity but there still needs to be some reasonable objective analysis provided. This is lacking in many of the purported individual impacts for the reasons indicated. Therefore, a conclusion on overall level of impact equating to harm has not been demonstrated and consequently, the second reason for refusal has not been substantiated notwithstanding the lack of preciseness in the reason in the first place.
9. In its first reason for refusal, the Council's consideration of explanatory text and policies relating to character and appearance is confusing when the issue is the living conditions of the occupiers of neighbouring residents. However, the Council has referred to topography to substantiate its reason for refusal here on outlook. The Council indicated that the reason for refusal based on the loss of a nursing home would not be contested even though it still appeared on its decision notice. Nevertheless, the Council's response gives sufficient assurance on this matter and it would have been open to the appellant to clarify this position. On these reasons for refusal, I find that unreasonable behaviour or wasted expense, as described in the PPG, has not been demonstrated. In terms of a Statement of Common Ground, this is not required for a written representation appeal case.
10. For the reasons set out above, I conclude that the authority has failed to show reasonable planning grounds for taking a decision contrary to the professional advice of officers, or to produce relevant objective evidence or analysis to support its contention that the proposals would be materially harmful in respect of the second reason for refusal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated on this basis and that a partial award of costs is justified.

Costs Order

11. 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 Church Walk House Property Development LLP, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathon Parsons

INSPECTOR