

Costs Decision

Site visit made on 2 December 2016

by Peter D Biggers BSc Hons MRTPI

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

Decision date:

Costs application in relation to Appeal Ref: APP/N5090/D/16/3160288 Kennel Cottages, Barnet Road, Barnet EN5 3 HZ

- 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 and Mrs F Marshall for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was made against the refusal of planning permission for demolition of existing rear extension and erection of single storey side and rear extensions.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. 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 or wasted expense in the appeal process.
 3. Paragraphs 47 and 49 of the *Planning Practice Guidance* (PPG) set out what may be considered unreasonable behaviour by the Local Planning Authority with respect to procedural matters in the appeal (paragraph 47) and with regard to the substance of the matter under appeal (paragraph 49).
 4. The application for costs does not refer to any of the procedural behaviours listed in paragraph 47. It does however raise three behaviours referred to in paragraph 49 that can result in a substantive award of costs.
 5. I have been invited to conclude that development has been delayed that should have clearly been permitted having regard to material considerations namely the existence of the schemes benefitting from Certificates of Lawfulness of Proposed Use or Development (CLOPUD) outweighing the development plan and national policy.
 6. The Council did go through a process of assessing the proposal against the development plan policies, national policy and other material considerations. It concluded that the proposal would be in conflict by virtue of being inappropriate development in the Green Belt which would also have adverse impacts on character and appearance and that the existence of the CLOPUD schemes would not outweigh the harm to the Green Belt by reason of inappropriateness. I acknowledge that the Council may not have set out in writing a particularly detailed assessment in respect of the fall-back proposals. Moreover I accept the
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applicants' point that the Council cannot reasonably take the absence of any works on site as an indication that the fall-back would not be implemented. This is because, as I set out in my decision letter, for as long as the applicants hoped that their preferred scheme would be permitted they would be unlikely to embark on potentially abortive works. Notwithstanding these points, the decision the Council has arrived at was reached having weighed the existence of the CLOPUD schemes. Just because the applicants do not agree with the conclusion reached by the Council does not mean development has been prevented or delayed which should have been permitted.

7. In terms of evidence to substantiate each reason for refusal on appeal the Householder Appeal Service does not allow the Council the opportunity to expand further on its reasons at appeal. However I am satisfied that the Council did set out in the report on the application its rationale both in respect of Green Belt issues and design concerns and set these in the context of its policies.
8. It has been put to me that the Council has made vague, generalised or inaccurate assertions about the proposal's impact unsupported by objective analysis. However the Council did assess the impact of the proposal against the policy objectives of the *Barnet Local Plan* and the advice in the *Barnet Residential Design Guidance*. These set out very clearly the concerns and provide advice on the form and design of extensions, including those in the Green Belt, which the applicants and their agents chose not to reflect in the submitted design. The applicants cannot reasonably expect the Council to have accepted inappropriate development in the Green Belt which would also have a materially detrimental impact on the character and appearance of the host dwelling simply because of the existence of the CLOPUD schemes. The behaviour of the Council in determining the planning application and refusing it for the reasons it gave is not unreasonable and it was the applicant's choice to submit the appeal.
9. For the reasons given above, in respect of the substantive behaviours referred to from the PPG, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and a full award of costs is not justified.

P. D. Biggers

INSPECTOR