



Costs Decision

Site visit made on 21 November 2017

by **Caroline Jones BA (Hons) DipTP MTP MRTPI**

Decision date: 19th December 2017

Costs application in relation to Appeal Ref: APP/N5090/W/17/3181130 67 Leicester Road, New Barnet, Barnet EN5 5EL

- 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 Leicester Road Estates Limited 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 demolition of the existing buildings and erection of a 2 storey plus roof detached building comprising 6no self-contained flats (2 x 2b4p, 2 x 1b2p, 1 x 2b3p, 1 x 3b6p with associated cycle and bin store, front and rear parking, communal amenity and landscape).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant submits that the Council has behaved unreasonably on both procedural and substantive grounds.
4. In terms of procedural grounds, my attention has been drawn to the Council's failure to adhere to deadlines set out within the start letter and that information that was sent was found to be incorrect. The appeal questionnaire was sent a day late and the Council had failed to answer question 23. The Council also sent out the neighbour letters with the incorrect consultation date.
5. Whilst the late submission of the questionnaire and error in the consultation letters could be considered unreasonable, it did not cause undue delays in the appeal process. Amended neighbour letters were issued with the correct date of 24 October 2017 and the Council submitted their appeal statement on time. There was no delay therefore in the applicant's ability to respond to the Council's statement or neighbour representations at the final comments stage. It is difficult to envisage any circumstances where the timely submission of the questionnaire and errors within the neighbour consultation letter would have led to any wasted expense by the applicant and the applicant has not clearly demonstrated why they consider this to be the case.

6. The applicant also argues that the Council submitted incorrect information by stating that the proposal would extend approximately 2m beyond the front elevation of 65 Leicester Road. The Council argue that this measurement was taken from the proposed floor plans drawings which show the first floor windows of No 65 set back from the front elevation of the proposed building. The applicant accepts that the architect has incorrectly drawn the first floor windows of No 65 on the wrong line. Although it can be seen from my decision that I acknowledge that there would not be a 2m forward projection, I cannot conclude the Council were at fault for an error contained in the submitted plans.
7. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. While a Council is not duty bound to follow the advice of its professional officers, it must clearly demonstrate on planning grounds that it had reasonable grounds for taking a contrary view.
8. In relation to the first reason for refusal, which relates to character and appearance, the applicant submits that the Council's defence rests on purely vague and inaccurate assertions without any objective analysis. The impact of a development on the character and appearance of an area is a matter on which the Council was entitled to exercise its planning judgement, even if this was contrary to the Planning Officer's recommendation. The reason for refusal set out in the decision notice was complete, precise, specific and relevant to the application. It clearly stated the policies of the Barnet Local Plan (2012) that the Council found the proposal to conflict with. Furthermore, the guidance within the Residential Design Guidance Supplementary Planning Document does not have the status of the development plan. That aside, the reason for refusal was adequately substantiated by the Council in its appeal statement, which explained its analysis and reasoning. Although I have reached a different view to that of the Council, I consider that the Council's first reason for refusal was sufficiently reasoned.
9. The second reason for refusal related to the impact of the proposed development on the living conditions of the occupiers of 65 Leicester Road with particular regard to light. Whilst the appellant submitted a daylight and sunlight assessment with their appeal, this was not available to the Members of the Committee at the time of making their decision. Again, this is a matter where they were entitled to exercise their planning judgement and the second reason for refusal was also clear and related to adopted policies.
10. The applicant draws my attention to wording from Circular 03/2009. However, this was withdrawn in 2014 and I cannot take this into consideration. Whilst I note the applicant's frustrations that the Council's appeal statement does not address the evidence submitted by the appellant, I am satisfied that the Council adequately substantiated this reason for refusal.
11. In addition to the above the applicant is of the opinion that the Council has been wholly inconsistent by granting planning permission for a revised proposal on the site. However, from the information before me, the approved scheme is smaller than the appeal proposal with stepping in at first and second floor level. The Council submit that the amended scheme made amendments which it felt

addressed the reasons for refusal and that the schemes are materially different. From the information before me, I am satisfied that the schemes are not directly comparable and cannot agree that the Council has acted unreasonably in this regard.

12. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is therefore not justified.

Caroline Jones

INSPECTOR