
Costs Decision

Site visit made on 28 November 2017

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 20th December 2017

Costs application in relation to Appeal Ref: APP/N5090/W/17/3181929 89 and 91 Highfield Avenue, Golders Green NW11 9TU

- 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 BISS 89 Limited and Mr & Mrs Beider for an award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for conversion of private dwelling house with alterations and extensions to form three self-contained flats at 89 Highfield Avenue and ground floor single storey extension to 91 Highfield Avenue
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Decision

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

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. Whilst the PPG sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal or with respect to procedural matters.
4. The two main strands to the application for a procedural award of costs by the applicant are that the Council has misinterpreted policy and that there has been a lack of communication from the Council during the consideration of the application.
5. With regard to the reasons for refusal, I appreciate that the outcome of the application will have been a disappointment to the applicant. It will be seen from my appeal decision, that I found no harm in terms of the third and fourth main issues, with respect to internal space requirements. It is unfortunate that the Council appear to have failed, with regard to one issue, to incorrectly implement development plan policy with regard to internal space standards. They also failed to seek early clarification on the issue of the proposed ceiling height of the attic unit.
6. Nevertheless, with regard to the first two main issues a sufficiently substantial case was made in support for the reasons for refusal within the case officer's

report and statement of case. I have also found significant harm in relation to these two issues.

7. That the Council could have made clear its concerns about the proposal and responded sooner to allow the opportunity to provide additional information or to revise the scheme appears to be in little doubt. A greater level of communication and 'solution finding' with the applicant earlier in the process may have led to a mutually acceptable proposal thus negating the need to pursue an appeal. Such an approach would be consistent with the policies of the National Planning Policy.
8. There is no doubt that communication is an important part of the planning process. Notwithstanding this, it is considered unlikely that this could have resolved the parties' pivotal differences, and therefore the appeal was necessary to resolve the issue. It is noted that the applicant submitted amended plans during the appeal process, which the Council gave their initial views on. However, the amended plans are materially different to the submitted scheme. As such, in order to avoid issues of prejudice, I concur with the view of the Council that a new planning application would be necessary.
9. Thus, on balance whilst some elements of the Council's behaviour have been unreasonable, overall the appellants' costs in mounting the appeal were not unnecessarily incurred.

Conclusion

10. It is therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so the application for an award of costs is refused.

Helen Cassini

INSPECTOR