



Costs Decision

Site visit made on 11 December 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 15th January 2018

Costs application in relation to Appeal Ref: APP/N5090/W/17/3181840 Spectrum House, Hillview Gardens, Hendon, London NW4 2JR.

- 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 Crocus Field Ltd 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 buildings and redevelopment of the site to provide a part three-storey part two-storey residential building with basement parking area to provide 33 flats and associated private and communal amenity space. Provision of 36 car parking spaces.
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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* (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and where this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses. Examples of unreasonable behaviour by planning authorities include:
 - a failure to produce evidence to substantiate each reason for refusal on appeal;
 - the use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, and
3. The overall aim is to ensure that local planning authorities should properly exercise their development management responsibilities and not to add to development costs through avoidable delay.
4. The Applicant alleges, inter alia, that the Council's reason for refusal is an expansion over and above that agreed at the Planning Committee Meeting. Moreover, it is said that the Council behaved unreasonably in assessing the planning merits of the case thus causing the Applicant the unnecessary expense connected with pursuing the appeal. The Council has made no direct response to the application for an award of costs against it.
5. As no party has provided a copy of the Committee Minutes I have no way of knowing whether the reason for refusal fairly reflects the views expressed by Members. Similarly, I am unable to comment of the allegation that the

Council's decision was based on nothing more than the extent of local opposition at a politically sensitive time. In any event, it is not for me to stray into such areas and it is open to the Applicant to take these concerns up directly with the Council.

6. However, I do take issue with the Council's handling of the application and in particular the paucity of its evidence to support the reason for refusal. From the Applicant's submissions it is apparent that the Planning Committee were specifically advised that the impact of the building on the living conditions of neighbouring residents would be less than the current building. Even if the Applicant is mistaken about that, the Committee Report clearly concluded "*that the scale of the proposal would be no greater in height and the central rear projection being set away from the side boundaries by at least 10m, it is not considered that the proposal would have a harmful impact in terms of loss of light, outlook or overbearing*".
7. I accept that the application was refused by Members contrary to the advice of its professional officers. Whilst it is a fundamental principle of local decision making that a planning committee is not bound to follow the advice of its officers, there is a reasonable expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. That clearly did not happen in this instance and little weight, if any, appears to have been placed on the nature and use of the existing buildings or the consented scheme for 27 units. No coherent evidence has been submitted by the Council to explain how the minor increase in density would amount to over-development or exactly how a building smaller than its predecessor would cause unacceptable harm to the outlook of neighbouring residents.
8. In its Appeal Statement the Council argues that the development should provide a degree of '*betterment*' for adjacent occupiers. However, there is patently no policy basis at either a local or national level for such an onerous requirement. Consequently, there is a very strong suggestion that the Council has misinterpreted its own planning policies. Moreover, the Council's argument that the development would straddle the boundary is erroneous.
9. I appreciate that local residents have genuine concerns about the effect of the proposed development, and this is a consideration which may in certain circumstances justify the refusal of planning permission. However I have found that this is not the case here and the amount of local objection does not support the reason for refusal. Finally, there is no evidence that the Planning Committee undertook any kind of balancing exercise. Had it done so, it would have been immediately apparent that the benefits of the scheme in terms of much needed additional housing clearly outweighed any perceived policy conflict.
10. Overall, I find the Council's submissions to be bereft of substantial evidence. The reason for refusal relies on no more than vague and generalised assertions unsupported by appropriate analysis and evidence. In particular, the lack of any detailed and specific evidence about the effect of the development on living conditions or the amenity of the area, means that the Council is not able to substantiate its reason for refusal or provide a clear and rational basis for rejecting the advice of its professional officers.

11. The Council's approach manifestly failed to embody the positive and proactive approach stipulated in its own development plan. I therefore find that the unreasonable behaviour threshold has been passed. Accordingly, the Applicant's costs in mounting the appeal were unnecessarily incurred and a full award of costs is justified in this case.

Costs Order

12. In the 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 Crocus Field Ltd, the costs of the appeal proceedings described in the heading of this decision.
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.

D. M. Young

Inspector