



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/17/3179968 8 Poynings Way, North Finchley, London N12 7LP.

- 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 Joe Henry 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 erection of a new two-storey dwelling house with rooms in roof space and basement level following demolition of garage and outbuildings. Alterations and extension to the existing dwelling including provision of rear dormer roof extension and roof lights. Part single, part two-storey rear extension.
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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
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
3. The Applicant's claim is made on substantive grounds and alleges that the Council's decision demonstrates a total disregard for the findings of the Inspector who dealt with the previous appeal¹. It is further argued that the Council failed to robustly defend its reasons for refusal thereby causing the Applicant the unnecessary expense connected with pursuing the appeal. The Council has defended its handling of the application stating its decision was a matter of planning judgement which has been fully justified in its Appeal Statement.

¹ Appeal Ref: APP/N5090/W/16/3163160

4. Although the Council accepts that the inclusion of a pre-application informative to the Decision Notice was erroneous, this in itself falls short of amounting to unreasonable behaviour. Nonetheless, as is evident from my appeal decision, I have found the Council's overall stance in relation to the appeal scheme to be concerning. The relevant Committee Report set out the putative reasons why Officers considered the proposal to be acceptable. Amongst other things it documented the relevant planning history for the site, correctly identified the previous appeal decision as being a material planning consideration and concluded that '*the scheme has addressed the reasons for refusal on character grounds raised by the Inspector*'.
5. Taking the first reason for refusal first, I accept that design considerations are often a matter of judgement. However, in this case there was an abject failure on the part of the Council to adduce the necessary evidence to support its concerns. The reason failed to have proper regard to the previous Inspector's decision which only found harm in two specific areas relating to the height of the eaves and amount of separation. Both matters were manifestly addressed by the amendments.
6. The Council's defence to its first reason for refusal amounted to little more than a paragraph in its appeal statement² and seems to rest almost entirely on the argument that the gap between the new dwelling and its neighbours would be less than others in Poynings Way. However, this argument fails, somewhat fundamentally, to acknowledge that the amount of separation would also be greater than other gaps in Poynings Way as demonstrated by the Applicant's analysis of separation distances. Based on this evidence and my own observations, I have found the Council's view that the development would be cramped, incongruous or amounting to overdevelopment to be without foundation.
7. In terms of the second reason for refusal, it is highly pertinent that the previous Inspector had found no harm to the living conditions of neighbouring residents. The Committee Report stated '*there are no other circumstances that warrant a different assessment*'. According to the Applicant, the Committee was also informed verbally that the relationship between the dwelling and No 6 was unchanged from the previous scheme. In these circumstances, there can be little doubt that the Council maintained its objection despite having full knowledge of the previous appeal decision.
8. 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.
9. I acknowledge that Members debated the application. However, as no substantive minutes of the relevant Committee meeting have been supplied, I have no way of knowing how Members came to reject the advice of its Officers.

² Paragraph 4.7

Conclusion

10. In this case I have found the Council's submissions to be bereft of substantial evidence. The reasons for refusal patently failed to stand up to scrutiny on appeal and this means that the Council's decision was injudicious and relies on no more than vague and generalised assertions unsupported by appropriate analysis and evidence. The Council also persisted in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated and that a full award of costs is justified

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 Mr Joe Henry, 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