



Costs Decision

Site visit made on 12 November 2019

by P N Jarratt BA DipTP MRTPI

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

Decision date: 3 December 2019

Costs application in relation to Appeal A: Ref APP/N5090/C/18/3216417 and Appeal B: Ref APP/N5090/W/18/3217292

Land at 39 Harman Drive, London, NW2 2ED

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Ayad Al-Shakarchi for a full award of costs against the London Borough of Barnet.
 - The appeal was against an enforcement notice alleging the erection of a raised patio and a boundary wall.
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Decision

1. The application for an award of costs fails.

Reasons

2. The Planning Practice Guidance 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.
3. The appellant claims that he has incurred unnecessary expense arising from the Council's unreasonable behaviour in respect of planning applications for the retention of a single-storey rear extension, patio and boundary wall and the subsequent appeal. He refers to the failure of the Council to determine planning application 17/4491/RCU, despite an officer recommendation to grant permission. In respect of application 18/3330/RCU (Appeal B) that was refused contrary to the officer's recommendation. The appellant points out the enforcement notice (Appeal A) does not refer to the rear extension and it is therefore assumed not to cause any planning harm. It is stated that the officers have consistently been of the opinion that the alterations to the boundary wall and the extension of the raised patio would cause no harm.
4. The Appeal (B) refusal relates to the height of the boundary wall and rear patio which the appellant considers that both elements of the building operations individually would not require permission and were only incorporated in the planning application at the Council's insistence. The Council point out that the nature of the patio as a raised platform does not qualify as permitted development when assessed against Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. The appellant argues that it should have been considered under Class E and Class F. The appellant's fallback position was that had the raised patio been undertaken as a separate building operation it would have been permitted development, which should

have been taken into consideration. The appellant states that the patio could have been erected as a separate building operation under Class F and this would have been a fallback position.

5. The appellant is unclear whether the patio should have been considered under Class E or Class F but this is not of any particular consequence. The appellant could have appealed against the non-determination of the application, made an application for a Lawful Development Certificate or appealed on ground (c) that there had not been a breach in planning control, but he chose not to do so.
6. Local Planning authorities are not bound to accept officer recommendations but when they do, they should have sound planning grounds for doing so. Failure to produce evidence to substantiate each reason for refusal on appeal could lead to an award of costs. (Guidance Paragraph: 049 Reference ID: 16-049-2014030). In this case the Committee carried out a site visit, presumably after having been made aware of a number of neighbour objections, and considered the residential amenity impacts of the development. Their concerns have been articulated in the decision notice and enforcement notice, in relation to the privacy of 39 Harman Drive. They have had regard to development plan policies, the most relevant of which require a judgement to be made about the impact of the development on the neighbour. Although I have reached a different decision on the appeals through the exercise of my own judgement, it does not mean that the judgement of the committee was either incorrect or unreasonable.
7. I conclude that the local planning authority has not behaved unreasonably leading to the appellant incurring unnecessary or wasted expense.

P N Jarratt

Inspector