
Costs Decision

Site visit made on 12 November 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Costs application in relation to Appeal Ref: APP/N5090/W/19/3235958 Cobbetts, 93 Lyonsdown Road, New Barnet, Barnet EN5 1JT

- 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 and Mrs A and K Verma for a partial award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for a replacement house.
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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.
3. The applicants contend that the council acted unreasonably in refusing the application on the basis of reasons numbered 2 and 3 on the decision notice. In respect of Reason 2, it is claimed that the council wrongly interpreted planning policy relating to minimum ceiling heights, and therefore refused permission for a proposal that was compliant. In respect of Reason 3, the applicants consider that evidence was submitted to demonstrate that there would be no harm to protected trees, and that the council has produced no evidence to demonstrate otherwise. It is also claimed that any remaining concerns could have been dealt with through the imposition of a planning condition. Consequently, the applicants consider that they have incurred unnecessary expense in challenging these reasons for refusal.
4. The PPG says that local planning authorities are at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The proposed ceiling heights would meet the requirements set out in the Nationally Described Space Standard. However, both the London Plan (2016) and the Council's Sustainable Design and Construction Supplementary Planning Document (2016) (the SPD) seek to achieve a higher standard of accommodation, to take account of the unique heat island effect of London. Both policy documents strongly encourage higher ceiling heights over a larger proportion of residential accommodation.

5. In my decision, I concluded that the comparatively low density of development in the area, combined with the high standard of internal floorspace and outdoor amenity space, meant that future occupants would enjoy acceptable living conditions without the higher ceiling heights. However, that was a matter of judgement, and it was not unreasonable for the council to seek to achieve the higher standard of accommodation that is strongly encouraged by the London Plan and the SPD.
6. The PPG says that local planning authorities are at risk of an award of costs for failing to produce evidence to substantiate each reason for refusal on appeal, or for refusing planning permission where suitable planning conditions would have enabled the development to go ahead. The application was supported by a Tree Report that concluded that there would be no harm to the trees. The council, however, had expert evidence from a consultee that cast doubt on these conclusions. It was not unreasonable for the council to give this advice significant weight.
7. Although the proposed house would be in a similar position to the existing dwelling, it would have windows that would be closer to the tree canopies. This is particularly the case for the windows in the first and second floors of the rear-facing gable. I concluded that a reasonable outlook would still be available from these windows. I also found that shading from the trees would not have a significant impact on the remaining outdoor amenity space for future occupants. As a result of these factors, I concluded that there would be no increase in post-development pressure to prune or remove the trees, but that was a matter of subjective judgement. It was not unreasonable for the council to conclude differently.
8. The modification of the Root Protection Area in the Tree Report was based on an assumption, rather than any investigative work. The council's expert consultee stated that, in the absence of empirical evidence, this assumption could not be relied on. Therefore, as the proposal would involve excavations closer to the beech tree than the existing house or the previously approved extension, roots could be affected, resulting in harm to the tree. I concluded that this was unlikely and that, in any event, the incursion would be minimal, but this was a balanced view, based on the conflicting evidence before me.
9. I concluded that tree protection could be dealt with by the imposition of a planning condition. However, even if the council had accepted that physical harm to the tree could be avoided through a planning condition, its concerns regarding post-development pressure to prune or remove the trees would have remained. It was not, therefore, unreasonable for the council to conclude that its overall concerns regarding the impact of the development on the trees, could not be overcome by the imposition of a planning condition.
10. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Nick Davies

INSPECTOR