
Costs Decision

Site visit made on 3 December 2019

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2019

Costs application in relation to Appeal Ref: APP/N5090/D/19/3237844 79 Hervey Close, London, N3 2HH

- 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 Simon Balestrini 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 single storey rear extension following demolition of existing garage.
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Decision

1. The application for the award of costs is partially allowed in the terms set out below.

Reasons

2. Irrespective of the outcome of the appeal, 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 applicant argues that the Council has been unreasonable insofar as the officer report made no reference to a submitted Daylight and Sunlight Study in their consideration of the original application. The Council has chosen not to provide any rebuttal to the applicant's case.
4. The study is not mentioned in the officer's report. The applicant also indicates that it was not placed on the Council's website alongside other application documents. The Council has not disputed that the document had been submitted with the application and could have been considered. The study was also provided by the Council with their questionnaire. This suggests it was in their possession and could have been referred to in the report. There is nothing before me therefore which suggests the study was not available.
5. While the Council would clearly not have been bound by the findings of the study, the lack of reference to it suggests that they made their decision without taking important evidence into account. As a result, it could be argued that their conclusions on the impact on daylight or sunlight are based on generalised assertions not supported by objective analysis. In light of the applicant's evidence, they have also failed to substantiate this element of their reasons for refusal. This constitutes unreasonable behaviour.
6. However, contrary to the applicant's assertions, the Council raised concerns other than impact on light. Concerns over the overbearing nature of the

extension and that it would result in an increased sense of enclosure for the occupant of No 81. This is a different and separate matter to consideration over light. As such, even if the Council had concluded differently on the issue of daylight or sunlight, based on their report it is still likely that they would have refused the application. I am not therefore persuaded that the appeal would not have been necessary.

7. Nevertheless, the applicant has had to waste expense in seeking to address concerns over the impact on light that may not have been necessary had the Council fully considered the evidence submitted. As such, I consider a partial award of costs relating to providing evidence on this particular issue is justified in this case.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In 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 to Mr Simon Balestrini, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the issues relating to daylight and sunlight.
10. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.