



Costs Decision

Site visit made on 10 March 2020

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 6th April 2020

Costs application in relation to Appeal Ref: APP/N5090/W/18/3214723 47 Woodstock Road, Golders Green, London NW11 8QD

- 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 Philip Morris for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for demolition of existing pair of semis and erection of a new build 4 storey building accommodating 9 self contained flats with accommodation at roof space and associated off-street parking, cycle storage, waste and recycling storage facilities and associated landscaping without complying with condition 2 of planning permission APP/N5090/W/15/3003500.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Government's Planning Practice Guidance states that irrespective of the outcome of the appeal, 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. Paragraph 046 of the PPG states that awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
4. As stated on the application form, the application which gives rise to this appeal was originally submitted in June 2018. The application was made under section 73 of the Act¹ (Section 73), for a variation of an existing planning condition. It is common ground between the main parties that the application was validated by the Council but not determined.
5. While I note the Council's reasoning for the delay relating to a scheme at West Heath Drive, from the evidence before me it did not seek an extension of time from the appellant. Furthermore, it considered that the application could not be determined under Section 73 some weeks after the application was validated. Accordingly, this amounts to unreasonable behaviour. However, the Council also had reasonable concerns about the impact of the proposed development. Therefore, even if the Council considered the application to be valid under Section 73, it is likely that the application would have been refused and the

¹ Town and Country Planning Act 1990

appellant would have proceeded with the appeal. Therefore, while the Council behaved unreasonably in this particular respect, this matter has not resulted in unnecessary or wasted expense in the appeal process.

6. In October 2018 the appeal was submitted to The Planning Inspectorate (Inspectorate), as stated in the appeal form. However, the appellant and Council then entered discussions and decided that another Section 73 planning application with an amended design would be submitted. I note the evidence regarding comments by the Council about the duplex apartments and balconies during these discussions. In any event, from the wider evidence, I do not consider that the Council failed to reasonably evaluate the application subject of this appeal.
7. With agreement from the Council, the appellant requested that this appeal be put into abeyance until that application had been determined by the Council. In November 2019 the Section 73 application was approved by the Council (reference 19/0996/S73) and the appellant wished to proceed with this appeal. Consequently, any delays with respect to this appeal were with the appellant's knowledge and the Council has not behaved unreasonably in this particular regard.
8. I acknowledge the correspondence between the main parties during and after the course of the application and the time taken for the subsequent Section 73 application to be approved by the Council, including a Section 106 agreement. However, since the delays relating to the Section 106 agreement was for another application that is not subject of this appeal, it has not been determinative in assessing this costs application. Moreover, there is insufficient evidence before me to suggest that the Council's behaviour resulted in delay in providing information or other failure to adhere to deadlines with respect to this appeal. In any event, given that this appeal was resumed after the completion of the Section 106 agreement and approval of that Section 73 application, any delay in this regard seems not to have affected the appellant's decision to resume the appeal. Accordingly, there is insufficient evidence to demonstrate that this has resulted in unnecessary or wasted expense during the appeal process.
9. I acknowledge the evidence relating to allegations of dishonesty during the appeal process. However, there is insufficient evidence before me to confirm such behaviour or that it has resulted in unnecessary or wasted expense.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Sabu

INSPECTOR