



Costs Decision

Site visit made on 13 July 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th July 2020

Costs application in relation to Appeal Ref: APP/N5090/W/20/3246916 49 Woodland Way, Mill Hill, London NW7 2JP

- 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 Mrs Evelie Dawson 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 a single storey rear extension.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, if it delays development that should clearly have been permitted or fails to substantiate a reason for refusal.
3. The Council refused the planning application contrary to the professional advice of its planning officers, but it was entitled to do so as the advice is not binding. However, the Council must be able to demonstrate objective reasons for taking such a course of action. In this instance, the planning application was refused due to perceived concerns that the proposal would harm the outlook from the upper floor flat. This is a legitimate planning concern and it is a matter of subjective planning judgment whether there would be harm.
4. The Council's conclusion on this matter was not unreasonable given how visible the extension is from the rear windows of 49a Woodland Way. In addition, the Officer's recommendation was 'on balance', which suggests the matter is not clear cut. The Council has adequately articulated its concerns in this regard within its reason for refusal and subsequent appeal statement, both referring to the development plan. Accordingly, in this instance a substantive error has not occurred from the Council departing from the advice of its professional Officers.
5. The Council refused the appeal scheme even though a previous single storey extension had been approved at the appeal site¹. However, the appeal scheme

¹ Council reference - 16/0735/FUL

would have a materially different form. The appeal scheme would have a greater impact on the living conditions of the occupants of the upper floor flat than the approved would have had. As such, the Council were entitled to come to a different view on the appeal scheme.

6. Like application should be considered in a like manner and there are other examples of single storey extensions near to the appeal site such as that at 39 Woodland Way, as noted in the Officer's report. However, the applicant has not demonstrated that there is a relevant development that is of the same, or very similar, massing, scale and size as the proposal. As such, the Council has not been demonstrably inconsistent and therefore this is a weak point in favour of an award of costs.
7. Taking the above points together I do not consider the appeal scheme should clearly have been approved. In this instance the acceptability of the proposal turned on matters of planning judgment. I do not share the view of the Council, but I do not consider it was so illogical or inherently flawed as to amount to an unreasonable substantive failing.

Conclusion

8. My overall conclusion is that the Council's decision did not amount to a substantive failure within the meaning of the PPG. As such, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred.

Graham Chamberlain,
INSPECTOR