The Planning Inspectorate

Costs Decision

Site visit made on 1 September 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2020

Costs application in relation to Appeal Ref: APP/N5090/W/20/3244920
50-54 Shakespeare Road, London NW7 4BH

- 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 Ms Weinberger, Tov 7 Ltd 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 demolition of 3 houses and the construction of a 2.5 storey building, plus basement, featuring 9 self-contained flats with associated vehicle parking, cycle parking, and refuse storage without complying with a condition attached to planning permission Ref 17/5074/FUL, dated 1 May 2018.

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 where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process.

3. It goes on to explain that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to procedural matters or to the substance of the matter under appeal. Examples given of unreasonable behaviour include 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; and acting contrary to, or not following, well-established case law.

4. The appeal relates to an application made under section 73 of the Town and Country Planning Act 1990 ('the Act') for a minor material amendment to a planning permission previously granted on the appeal site under application reference 17/5074/FUL. The appeal application was made and registered, although not determined, by the Council prior to the Court of Appeal's judgement in the case of Finney[1]. This judgement clarified the scope of powers available under section 73 of the Act, and is therefore of direct relevance to the proposal. As a consequence, it was not unreasonable of the Council to take this judgement into account.

[1] Finney v Welsh Ministers, Carmarthenshire County Council and Energiekontor (UK) Ltd [2019] EWCA Civ 1868 dated 5 November 2019

5. The applicant suggests that Finney was only concerned with a fundamental change to the description of development. However, in addition to confirming that section 73 cannot be used to change the description of development, Finney also held that there should not be a conflict between what was permitted in an original consent and what a new condition requires.

6. The appeal proposal sought to make changes to the development previously approved through substituting amended plans. The application under section 73 did not specifically seek variation of the description of the approved development. Nevertheless, and in light of Finney, it was not unreasonable for the Council to consider whether the changes shown on the amended plans would lead to conflict with the nature of what was permitted, in which case approval of the application would be unlawful.

7. I have ultimately reached a different conclusion to the Council, and found that the appeal proposal would not result in a fundamental alteration to the approved development or in conflict between the terms of the development shown by the drawings and the description. However, these are matters of planning judgement. Irrespective of the fact that variation of the description of the approved development was not explicitly applied for, the Council's position that the proposal would fundamentally change the nature of the development and require a change to the description was not unsound in principle or unsubstantiated by evidence.

8. Accordingly, I do not find that the Council misinterpreted or failed to properly consider the implications of the Finney judgement, nor that it has unreasonably prevented development which should clearly have been permitted.

9. I note that the Council's decision on the application was made around 2 weeks after the prescribed period, and I have not been provided with evidence that the applicant agreed to a longer period for determination. However, the PPG notes that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, and it has not been demonstrated that this delay has resulted in additional or wasted expenditure in the appeal process.

Conclusion

10. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR