

Costs Decision

Site visit made on 9 September 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2020

Costs application in relation to Appeal Ref: APP/N5090/W/20/3250343 Leahurst Nursery, 36A Galley Lane, Barnet EN5 4AJ

- 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 Lyndon Osborn 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 the erection of an agricultural building for use as machinery storage, potting shed, compost and materials.
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Decision

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

Procedural Matter

2. For clarity and precision, I have taken the description of development in the banner heading from the appeal form and decision notice.

Reasons

3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Patently this is a two-stage test. The PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process.
4. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded. An award of costs may either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. The applicant's application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense, for substantive reasons, as considered below. Paragraph 049 of the PPG cites various examples of unreasonable behaviour by local planning authorities.
5. There are a number of elements that the applicant brings to their claim on substantive grounds, in particular a failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis and acting contrary to, or not following, well-established case law. Additionally the applicant asserts that they were unable to enter into constructive dialogue with the Council that would have allowed matters to be resolved or changes made

- to the scheme to make it acceptable and that the Council did not review its case promptly following the lodging of the appeal, as part of sensible on-going case management and that collectively this prevented or delayed development that should clearly be permitted. There is also some concern surrounding the experience of the members of staff in the processing of the application.
6. The applicant brought a judgment¹ to the Council's attention before the determination of the application, which has not been taken into consideration by the Council at either application or appeal stage. The judgment confirms where development is found to be 'not inappropriate', applying paragraph's 145 or 146 of the National Planning Policy Framework, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt (see para 17 of the judgment). In coming to the conclusion that it did surrounding the effect of the proposed development on Green Belt openness, this was not in accordance with established case law and therefore constitutes unreasonable behaviour from the Council.
 7. Whilst it will be seen from my appeal decision that I disagree with the Council with regard to the sole reason for refusal relating to the impact of the proposed development. I find the Council's consideration of the effects of the proposed development on character and appearance to be matters of planning judgement. This involves some subjective analysis having regard to the context of the site, the proposed development and the development plan, amongst other things. Furthermore, I accept that the Council would have local knowledge of the site and area, had visited the site as part of determining the planning application and also undertook discussions about the proposed development through a series of emails² and a reported telephone conversation³.
 8. The most notable area of disagreement between the main parties centres around the height of the proposed development, which the Council considers excessive. I note that the applicant confirms in a document⁴ submitted to the Council before the determination of the application: "Height. Any less than 3.5 metres will not allow a forklift to operate within the building, or the tipping trailer to tip". This corresponds with the height of the roller doors to the proposed development. As I found on my decision, the proposed eaves height of 4.0m and a shallow pitch roof with a proposed ridge height of 5.1m is not excessive. I accept there is a degree of subjectivity on this issue, although in this instance, I find little clarity or justification from the Council surrounding its concerns on this issue.
 9. The evidence presented in the applicant's appeal submission further elaborates on the previous details submitted to the Council. It is evident from the Council's submission that it failed to review its case promptly as part of sensible ongoing case management, which the PPG indicates is an example of unreasonable behaviour. The Council assert that the proposed development was not only refused for its height, but in relation to a combination of the proposed size, siting, scale and design. However, the Council have provided little in the way of analysis surrounding this combination of factors. In addition,

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor [2016] EWCA Civ 404

² Dated 13 January to 20 March 2020 (including the last response from the applicant)

³ Dated 21 January 2020

⁴ 5.11 of Additional Agricultural Information 17 January 2020

there is an incorrect measurement quoted⁵ on the Council's submission. Consequently, on this issue, I find that little detail has been provided by the Council to substantiate its reason for refusal on appeal, with vague, generalised and inaccurate assertions about the proposal's impact, which is unsupported by any objective analysis.

10. From communications that I have seen, I have no reason to doubt the knowledge, professionalism or interpersonal skills of Officers involved in the determination of the application. However, to my mind, the Council have exhibited various examples of behaviour that has clearly resulted in wasted expense in the appeal process.
11. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is therefore justified.

Costs Order

12. 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 Lyndon Osborn, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. 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.

W Johnson

INSPECTOR

⁵ Insert 9: Tipping Height of a Trailer (4.6m) on P.21 of the Appellant's Statement March 2020