



Costs Decision

Site visit made on 20 October 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2020

Costs application in relation to Appeal Ref: APP/N5090/X/19/3243802 7 Laurel Gardens, Mill Hill, London NW7 3HA

- The application is made under the Town and Country Planning Act 1990, sections 195, 196(8) and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jadeep Pattni and Mrs Baljeet Chane for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of the existing granny annex as a one bedroom self-contained flat.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process-paragraphs 028 and 030. The PPG paragraph 031 explains that unreasonable behaviour can be either procedural-relating to the process, or; substantive-relating to the issues arising from the merits of the appeal.
3. The application for an award of costs was made in writing, in accordance with the guidance at paragraph 035. An award of costs was sought on procedural and substantive grounds. In summary, the applicants argued that the Council did not assess the application or the factual evidence submitted with it correctly and had reached erroneous conclusions. In turn, this had meant that the Council could not substantiate its case. As a result, the applicants had been put to the unnecessary expense of making an appeal.
4. Paragraph 047 of the PPG stresses that a Council should behave reasonably in relation to procedural matters at the appeal. The non-exhaustive list of examples of where a Council risks an award of costs being made on procedural grounds includes providing information that is shown to be manifestly inaccurate. At paragraph 049, the PPG advises that a Council risks an award of costs on substantive grounds where an application is unreasonably refused. The non-exhaustive list of examples of where this might arise include failing to produce evidence to substantiate reasons for refusal, making 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.

5. The burden was on the applicants to submit sufficiently clear and precise evidence to demonstrate why, on the balance of probability, a certificate of lawful use or development should be granted. The Council's delegated report dealt with all of the applicants' submitted evidence. On a fair reading, the report referred to an absence of evidence which might have helped to support the claimed use as a separate self-contained dwelling for more than four years. I did not read the report as suggesting that any of the applicants' evidence was factually inaccurate. Also, as the applicants' affidavits are referred to, the report cannot sensibly be read as suggesting that no such evidence had accompanied the application.
6. The reference in the report to the date range when the appeal site was visited by signatories to the petition is inaccurate. Such a misunderstanding could be regarded as unreasonable. Even so, other evidence submitted by the applicants had sought to show that there had been more than four years of residential use separate from the main dwelling. Reference was also made in the report to a 'substantial gap' in the submitted evidence 'from 2010 and 2015'. However, I read this as referring to evidence generally, not tenancy agreements in particular. In any event, it is clear from the report that the Council understood what the relevant time period was for assessing whether the use claimed was lawful. Therefore, it is doubtful whether either of the above matters made a difference to the outcome of the application.
7. The applicants did not offer a detailed explanation in their affidavits as to why they considered that a separate self-contained dwelling had been in existence for the period claimed. Also, as far as I am aware no explanation was offered at the application stage regarding the absence of separate utilities or a separate Council Tax rating, i.e. factors which might normally be regarded as indicators of a separate unit of residential accommodation. As a result, the Council's conclusion of an evidential lacuna in the above regard is perhaps unsurprising. Whilst the Council could have sought the submission of further information, this is not always practicable having regard to the timescales for determining applications. In any event, given the Council's interpretation of the available evidence, in my view this is unlikely to have made a difference to the outcome of the application.
8. The age of the internal fixtures and fittings would not have assisted greatly in terms of assessing whether there had been use as a separate self-contained dwelling for the period claimed. This is because the existence of the facilities required for independent day-to-day living is not, in itself, determinative of a separate dwelling. As a result, the lack of a site visit by the Council is also unlikely to have made a difference to the outcome of the application.
9. The Council's written statement expanded on its case at appeal, also referring to physical factors as well as information taken from the recent planning history of the site. Such matters can be pertinent when considering whether, as a matter of fact and degree, subdivision of a planning unit has occurred. The relevance of those matters to the Council's case was fully explained and took account of well-established case law. It is not inherently unreasonable for the Council to reference and give weight as they consider appropriate to relevant documentation submitted as part of previous planning submissions. The Council's reasons for doing so were fully explained. Nothing in the written statement or the report gave me any reason to believe that the Council questioned the sincerity of the applicants' evidence.

10. Taking all of the above matters into account, the Council have shown in its case at appeal that it was possible to reach a reasoned and objective, opposite conclusion to that of the applicants, based on a different interpretation of the available evidence. Therefore, when looked at as a whole the Council have reached reasoned conclusions as to why they considered that the civil burden of proof had not been discharged in this case.
11. Accordingly, whilst I did not share the Council's interpretation of the available evidence, it has nevertheless substantiated its case at appeal. In particular, I have not found anything which suggested that the Council have acted in any way similar to the examples of unreasonable behaviour in the PPG referred to above. It follows that the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR