
Costs Decision

Site visit made on 18 August 2020

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th October 2020

Costs application in relation to Appeal Ref: APP/N5090/W/20/3248645 Land at 49 and 51 Beresford Avenue, London N20 0AD

- 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 Millen Homes 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 'Retention of 49 and 51 Beresford Avenue to provide 6 Passive Eco Houses'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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. The applicant claims that the Council acted unreasonably as it relied on development plan policies that are not relevant to the reason for refusing the planning application. In addition, the applicant claims the Council's decision directly conflicts with findings for a previous appeal scheme¹, which is similar to the one I have considered, and conflicts with the advice of the Highway Authority in relation to the application.
4. The PPG sets out that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; fail to produce evidence to substantiate each reason for refusal on appeal; make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and persist in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
5. The Council's refusal reason refers to concerns that vehicle activity arising from the development would result in unacceptable levels of noise and disturbance to the occupiers of properties near to the site. It also sets out that the movement of large vehicles would be impeded. The refusal reason states that there is conflict with Policy CS5 of Barnet's Local Plan Core Strategy

¹ Appeal reference: APP/N5090/W/18/3208804

Development Plan Document (CS) and Policy DM01 of Barnet's Local Plan Development Management Policies Development Plan Document (DM).

6. Noise and disturbance matters were considered for both the appeal I have considered and the previous appeal. The Inspector for the previous one identifies at paragraph 11 of their decision letter that neither CS Policy CS5 or DM Policy DM01 refer to noise or disturbance. While the policies both directly and indirectly relate to some amenity considerations, I agree that neither refers to noise or disturbance specifically. I therefore consider that the Council misapplied these policies. No other development plan or national policies were referred to which substantiated the Council's views in respect of noise and disturbance matters.
7. The applicant provided technical evidence which demonstrated that noise and disturbance from vehicles generated by the development would not be harmful to occupiers near to the site. The Council asserted that the scheme would cause unacceptable levels of noise and disturbance, but it did not provide objective analysis as to why it considered that to be the case or put forward evidence to counter the applicant's evidence. I thus find that the Council failed to substantiate its reason for refusal in respect of noise and disturbance.
8. I note that CS Policy CS5 and DM Policy DM01 seek to ensure that development results in safe and accessible spaces and in that respect they are relevant to highway matters. However, the Council's concern regarding the movement of large vehicles was not an issue for the previous appeal.
9. There are no changes in the number of the proposed dwellings and the arrangements for vehicle access and turning are similar to the previous scheme. The Council did not put forward evidence which indicated that there would be a significant increase in the number of vehicle movements generated by the scheme that I considered in comparison with the previous one, nor did it provide any other evidence which indicated that it would impede the movement of large vehicles. I find that the Council failed to substantiate introducing its concern regarding the movement of large vehicles into its refusal.
10. I acknowledge that the Council's Planning Committee determined that planning permission should be refused, contrary to the officers' recommendation. While the Planning Committee is not duty bound to follow the advice of its officers or consultees, if a different decision is reached the Council has to clearly demonstrate why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. For the above reasons, I am not satisfied that the Council provided evidence which substantiated its reason for refusal on appeal in this case.
11. The refusal of planning permission therefore constitutes unreasonable behaviour described in the PPG and the applicant has thus been faced with the unnecessary expense of lodging the appeal. 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 Millen Homes Ltd, 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.

Mark Philpott

INSPECTOR