



Costs Decision

Site visit made on 21 October 2020

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2020

Costs application in relation to Appeal Ref: APP/N5090/W/20/3250956 Garages Rear Of 1-5 Campbell Croft, Edgware, HA8 8DS

- 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 Messrs Jacobs, Denton, Matthey, Cohen and Nagrecha for a full award of costs against Barnet London Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of 5no derelict garages and erection of a two storey dwelling, associated parking, cycle store, refuse and recycling and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance 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.

The Application

3. Both refusal reasons represent unreasonable behaviour. With regard to the first reason, attention is drawn to the council's Residential Design Guide 2016 which includes, at paragraph 8.11, the statements '*The rigid application of amenity space standards can sometimes restrict creative design and layout of new residential developments, particularly on smaller development sites. Developers are encouraged to bring forward schemes involving imaginative and innovative provision of outdoor amenity space on smaller sites*'. Appendix 2 to the document sets out minimum amenity areas on the basis of the number of habitable rooms in the dwelling. In this case, as a 3 bedroom house, with 4 habitable rooms, it requires a minimum of 40 m³ of outside private amenity area. This is provided even with a second parking space. It was unreasonable of the Council to regard the appeal site as anything but a smaller site for the purposes of paragraph 8.11, and unreasonable to require space provision for a dwelling of 5 habitable rooms.
4. The Council failed to substantiate its case in regard to the second refusal reason, in the matter of the location's character and pattern of development. It is incumbent on the decision maker to base decisions involving the character and pattern of development of a location upon the facts rather than a misleading generalisation. This matter was flagged up in the Design and Access statement, but ignored.

5. Both reasons for refusal are based on an analysis which is vague, generalised or inaccurate about the proposal's impact. An objective analysis, as contained in the Design and Access Statement, would have avoided the refusal of permission and the consequent appeal. The Council's refusal was unreasonable and caused the appellants to waste expense.

The Rebuttal

6. In response to the first substantive claim, the Council requires scalable electronic documents and uses electronic means to measure the plans for assessment. To ensure a correct response to this claim for costs, that assessment has been repeated. The measurement of rear amenity space provided still returns a total of 44m². Page 50 of the Sustainable Design and Construction SPD (2016) gives a description of what constitutes a habitable room which is as follows; 'A room within a dwelling, the primary purpose of which is for living, sleeping or dining, including kitchens where the total area is more than 13m² (including fittings), or the dining space if it is divided from the working area by a moveable partition. Rooms exceeding 20m² will be counted as two'.
7. The 'Living/Kitchen' space in the appeal proposal amount to 36.5m² and therefore counts as two habitable rooms. This, in addition to 2 bedrooms and 'Study/Bedroom 3', counts as a total of 5 habitable rooms. Table 2.3 of the Sustainable Design and Construction SPD highlights that for houses of five or more habitable rooms a minimum of 55m² of usable outdoor amenity space is required. As such the proposal does fall considerably below this and the correct assessment made was not unreasonable.
8. With regard to the claim relating to the location's character and pattern of development, the Council was aware of the later addition of Campbell Croft to the surrounding site and the officer's report explicitly acknowledge it as deviating from the traditional block system. However, the pattern of development that provides the context for any contemporary application is made up of more than Campbell Croft itself, and the surrounding area as a whole forms a material consideration when assessing the merits of the scheme.

Conclusions

9. As will be seen from my decision issued on this case, I have found the Council's reasoning substantiated the reason for refusal, in respect of the private amenity space. I reached my conclusion on the basis of the Council's case that its policy for the required amount of space, as a starting point, is based on counting rooms exceeding 20m² as two. I then found the private amenity space in the scheme sufficiently lacking as to justify the refusal.
10. On the second matter, I have found in the appellants favour. However, that fact alone does not justify an award of costs. I consider that the Council made a sufficient case, on the basis of its planning judgement, for the second refusal reason, albeit that I disagreed with that judgement. I do not regard the reasoning of the officer underlying that judgement to have been sufficiently unsound as to justify an award.
11. I therefore conclude, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been

demonstrated. For this reason, and having regard to all matters raised, an award for costs is therefore not justified.

Terrence Kemmann-Lane

INSPECTOR