



Costs Award

Site visit made on 7 December 2020

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Award date: 19 January 2021

Costs award in relation to Appeal Ref: APP/N5090/D/20/3257489 Church End House, 44 Totteridge Village, Whetstone, London N20 8PR

- 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 appeal was made by Mr Fausto Furlotti against the decision of the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for the erection of a new garage, with residential accommodation in the roof space for use ancillary to main house, following demolition of existing garage.
 - **Summary of award: A full award of costs is made against the Council of the London Borough of Barnet.**
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Procedural Matters

1. Following the issue of my decision on 22 December 2020, the Planning Inspectorate's Costs and Decision Team (CDT) wrote to the Council to say that I was considering whether to make an award of costs against them. This was on the grounds that the Council had:
 - Failed to grant a further planning permission for a scheme that is the subject of a recently expired permission, where there have been no material changes in circumstances.
 - Failed to produce evidence to substantiate its reason for refusal on appeal.

The Council responded in accordance with the timetable CDT set out.

The response of the Council

2. The Council's cost rebuttal focuses on the following substantive ground for an award of costs:
 - 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.
3. The costs rebuttal states that there have been no material changes to the scheme or the policy framework since the previous proposal was granted planning permission.
4. However, due to the number of objections to the proposal that were received, the appeal proposal was determined at a meeting of the Council's Planning Committee, rather than by officers under the Council's scheme of delegation, as was the case with the previously approved scheme.

5. Members took a different view as to the merits of the proposed scheme than their officers, who had recommended that planning permission be granted, and voted to refuse consent. Planning permission for the previous scheme had expired by the time the Council's decision on the appeal proposal was made.
6. The costs rebuttal states that the Council did not substantiate its reason for refusal by submitting an appeal statement, but that it was clear what the concerns of Members were in this case from the reason for refusal.
7. The costs rebuttal includes references to local and national policy and to legislation, together with further paragraphs to corroborate the decision to refuse planning permission.

Reasons

8. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
9. The Council's costs rebuttal focuses on a substantive ground that I did not raise with them. The costs rebuttal also seeks to substantiate the planning judgement of Members in refusing planning permission. These matters are not relevant to my costs decision.
10. The Council accepts that there have been no material changes to the proposal or the policy framework since the previous scheme was granted planning permission.
11. In terms of decision-making, whether a planning application is determined by Members at Planning Committee, or by officers under a scheme of delegation, is immaterial; in either case the decision is that of the Council acting as Local Planning Authority (LPA).
12. Members are entitled to reach a different conclusion with regard to the acceptability of a scheme than their officers. However, it was the LPA – not officers – that had previously granted planning permission for the same proposal.
13. It is clear from the Council's reason for refusal what Members' concerns with the proposal were. However, the Council did not provide evidence of any material changes in circumstances since the previous scheme was granted planning permission, which would have caused it to reach a different decision to that which it made previously. From the evidence, I am satisfied that no such changes in circumstances exist.
14. Furthermore, the Council did not substantiate its reason for refusing planning permission at appeal, with particular regard to the divergence from its previous decision.
15. No compelling explanation for the Council's behaviour has been provided and I am satisfied that there are substantive grounds for an award of costs¹.

Conclusion

16. For these reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense as described in PPG, has been demonstrated and that a full award of costs is therefore justified.

¹ PPG Appeals - Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

Costs Order

17. 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 Fausto Furlotti 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.
18. Mr Fausto Furlotti 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.

Andrew Parkin

INSPECTOR