



Costs Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2021

Costs application in relation to Appeal Ref: APP/N5090/D/20/3260750 53 Ridge Hill, Golders Green, London NW11 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 application is made by Mr Adil Malik 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 what is described as "*To provide two further bath/shower rooms at the property*".
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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, causing another party to incur unnecessary or wasted expenditure in the appeal process- paragraphs 028 and 030. "Unreasonable" has its ordinary meaning, as established by the Courts¹. Paragraph 031 advises 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 advice in the PPG paragraph 035. The award is sought on substantive grounds. The applicant's reasons for seeking an award are in summary that the Council did not expressly consider whether the proposal was excluded from the definition of development by s55 (2) of the Act, thereby acting contrary to the legislation. The Council then wrongly went on to assess the proposal against policies in the Development Plan, in doing so drawing conclusions which cannot be substantiated, putting the applicant to the unnecessary expense of pursuing an appeal.
4. The PPG paragraph 049 advises that a Council risks an award of costs being made if they behave unreasonably with respect to the substance of the matter under appeal. The non-exhaustive list of behaviour where an award of costs may be made on substantive grounds includes: where development is prevented or delayed which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other material considerations; where there is a failure to produce evidence to substantiate each reason for refusal, and; making vague, generalised or inaccurate

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

assertions about the impact of a development which are unsupported by any objective analysis.

5. The appeal property is the subject of an enforcement notice concerning an unauthorised material change of use to five flats. Amongst other things, the notice requires removal of works which, on their own, did not constitute development but nevertheless facilitated the material change of use. Removal of all but two of the shower rooms was required. The Council's officer delegated report suggested that the notice had not been fully complied with and having regard to the restrictions on travel due to the COVID-19 pandemic, there is unlikely to have been an opportunity to establish otherwise. In the enforcement notice appeal, it does not seem to have formed part of the applicant's case that four shower rooms should be retained in conjunction with the use of the property as a single dwelling. As far as I am aware, following the appeal decision there was no request made to the Council to exercise its power under s173A(1)(b), to waive or relax the notice requirements in respect of two further shower rooms. Moreover, the applicant also previously made an application for a Lawful Development Certificate (LDC) under s192 of the Act for conversion of the property to a single dwelling with two kitchens and four shower rooms. That application was refused but no appeal was lodged².
6. Submitting a planning application is not an alternative route for formally determining whether a proposal is lawful in planning terms. I appreciate that the applicant wanted to establish whether the proposal was lawful. However, that is a matter for an application for an LDC under s192 of the Act and a subsequent appeal if necessary. The applicant did not refer to any part of the legislation or case law that supported a contrary approach. The applicant was not compelled to submit a planning application. Having submitted such an application it would not be unreasonable to expect that the Council would consider the proposal on its planning merits; it would be unusual for any applicant to expect otherwise.
7. Set in the above context, it is perhaps unsurprising that the Council interpreted the proposal as a rolling back of the requirements of the enforcement notice, as opposed to merely constituting internal works to a single dwelling. The Council set out its reasons for reaching that conclusion in the report. Therefore, I am not persuaded that the Council's actions in relation to whether the proposal required planning permission were misconceived.
8. The Council determined the application against the policies in the Development Plan and had regard to all the other material considerations, concluding that unacceptable harm would be caused to the character and appearance of the area. Whether the proposal would cause harm in this respect is open to interpretation, as opinions on such matters differ. The Council's conclusion was therefore largely an exercise in judgment. The Council set out the reasoning behind its approach and the conclusion reached in the report. In particular, the report explained why what the Council interpreted as a rolling back on the requirements of the enforcement notice caused unacceptable harm to the character of an area largely made up of family housing. The Council's evidence is site-specific, it is not inherently inaccurate and has an objective basis. The Council showed how it was possible to come to an alternative conclusion to that of the applicant in a reasoned manner. The conclusion reached is not merely

² Council Ref: 20/1840/192.

based on assertion but is founded in the evidence which led to the planning harm the Council identified. None of the above factors suggest that the proposal is one that should clearly have been permitted.

9. Accordingly, although I did not reach a similar conclusion on the planning merits of the proposal, I find that the Council has nevertheless substantiated its case at appeal. In particular, there is nothing to suggest that the Council acted in a manner akin to the examples of unreasonable behaviour referred to above, or to the other examples set out in the PPG concerning the substance of the matter at appeal, or otherwise acted unreasonably. It follows that the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

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

Stephen Hawkins

INSPECTOR