



Costs Decision

Site visit made on 06 April 2021

by Peter D Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2021

Costs application in relation to Appeal Ref: APP/N5090/W/20/3262068 185 West heath Road, Hampstead, London NW3 7TT.

- 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 and Mrs A Newington for a full award of costs against London Borough of Barnet Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of a three storey dwelling with lower ground floor level. New boundary wall and gates.
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Decision

1. The application for a full 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.
3. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The appellant has not sought to differentiate in this case but from the costs application it would appear that it is largely substantive matters that are at issue.
4. The application for costs has arisen out of concerns over 3 issues. First that the Council has not determined similar cases in a consistent manner. Secondly, that the Council in making its determination depended on images which inaccurately portray the proposal's impact and thirdly that it depended on advice in the *Barnet Residential Design Guide Supplementary Planning Document* (RDG) which related to extensions and not to new build dwellings.
5. Regarding the need for consistency in decision making, it has been put to me that the case officer acted inconsistently in recommending refusal to 20/1816/FUL when they had previously recommended approval for an identical design of dwelling in 18/4447/FUL. However, the decision is not made by Barnet Council until the officer recommendation has been approved and the application determined, whether by the Planning Committee or by an authorised officer under delegated powers. In this case, the 2018 decision was taken by Committee and the application was refused contrary to the officer's recommendation. In these circumstances it is incumbent on the Committee to provide clear planning reasons for the refusal based on the policies of the Council's adopted Development Plan. It is clear from the Council's costs application rebuttal statement that a Committee site visit took place prior to the determination of the 2018 application. Members

would therefore have had a very clear understanding of the circumstances of the proposal when they took their decision and based it on policies CS1 and CS5 of the *Barnet Local Plan Core Strategy* (BLPCS) and Policy DM01 of the *Barnet Local Plan Development Management Policies* (BLPDMP).

6. This 2018 decision made by the Council is a material consideration in the subsequent determination of the 2020 application for an identical proposal and it would have been an inconsistent decision of the Council, under delegated powers, had the 2020 application been approved without any change in circumstances. The Council therefore has determined the appeal proposal consistently and has not acted unreasonably.
7. I turn now to the assertion that the Council's decision on the appeal proposal was unduly influenced by third party photographic evidence which the appellant argues was manipulated. I note that in this case no site visit was carried out which is an unfortunate but inevitable result of the timing of the application in relation to the 2020 pandemic lockdown. The reality of considering planning applications, particularly during the current difficult circumstances, is that the case officer will rely on evidence from many different sources, including, but not exclusively, archive, online and submitted photographs. It is clear from the Council's rebuttal statement that, in this case, the case officer also had recourse to advice from the senior officer supervising the case who had visited the site during consideration of the 2018 application and had viewed the proposals from the neighbouring property No 183A. I have no reason to doubt this evidence and no basis to conclude that there was undue influence from inaccurate photographs submitted by the third party. I accept however that it would have been helpful, given the unusual circumstances applying during lockdown, had the case officer's report more clearly set out that no site visit had been undertaken and on what basis the consideration had been undertaken. However, this, in itself, does not amount to unreasonable behaviour.
8. Finally, I turn to the use of a section of the RDG relating to extensions in the assessment of the design of a new build house. Whilst the advice regarding appropriate depths of rear projections is in the section of the guidance relating to extensions rather than in what is more general advice in Part 2 of the RDG I do not consider that applying the guidance to a rear projection on a new build is necessarily inappropriate. The RDG in Part 3 sets out what are generally acceptable relationships between new and existing built form in relation to rear projections proposed in extending properties and it not any less relevant simply because the proposal is for a complete new house rather than an extension. In any event the advice is only guidance. The RDG is designed to help the interpretation and application of the policies of the Local Plan in this case in particular BLPDMP Policy DM01. The decision was taken on the grounds that in the officers' opinion the objectives of this policy and others in the Core Strategy were not met. On that basis the Council has not acted unreasonably.
9. In conclusion, I am satisfied that the Council had a reasonable basis for its decision and, as a Council, determined the 2020 application in a consistent manner given earlier decisions and with a reason for refusal supported by relevant Development Plan policies and not simply guidance. Furthermore, there is no persuasive evidence before me to suggest that undue weight was afforded to any adjusted photographic images submitted by the third parties.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense of the appeal process, as described in the Planning Practice Guidance, has not been demonstrated.

P. D. Biggers

INSPECTOR