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## Costs Decision

Site visit made on 21 April 2021

**by Sarah Colebourne MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 May 2021**

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### **Costs application in relation to Appeal Ref: APP/T5150/W/20/3261986 2 Gladstone Park Gardens, London, NW2 6JU**

- 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 N Shah for a full award of costs against the decision of the Council of the London Borough of Brent.
  - The appeal was made against the refusal of planning permission for 'conversion of a single, family house into three independent flats. Creation of a second floor and ground floor rear extension and enlargement of the basement.'
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### **Decision**

1. I refuse the application for a full or partial award of costs.

### **Reasons**

2. The government's Planning Practice Guidance (PPG) states 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 PPG only allows for costs to be claimed that area directly related to the appeal and does not allow costs to be claimed for the period during the determination of the application but behaviour and actions during that time can be taken into account in the consideration of a costs award.
3. There have been three applications for a similar form of development at the appeal site. The second is the subject of this appeal.
4. The applicant has referred to late feedback from the Council regarding the first application which was then withdrawn in August 2019. That feedback did not refer to the issue of the internal amenity of bedroom 1 in Flat A which is the subject of this appeal. However, the applicant's appeal evidence indicates that in April 2019 the Council considered the first pre-application scheme unsuitable due to quality of outlook and light to the same front bedroom with lightwell in the basement which is also the subject of this appeal. The appellant would have been aware of that advice.
5. A similar proposal was then submitted in December 2019 which is the subject of this appeal. The case officer suggested further amendments as it did not deal with all of its previous concerns. Amended plans were then submitted but the case officer's recommendation for approval was not agreed by the more senior signing off officer. The Council's evidence shows that in an email dated 6 February 2020 (just within the statutory period for determination) the case officer explained those concerns which included the main issue of the internal amenity in bedroom 1 in Flat A, referring specifically to light and sense of

enclosure. The applicant claims that at that point the Council did not make clear its objections and it was not possible to speak to the Council. However, it seems to me that the Council's position on this matter was made clear in that email and had already been made clear in the Pre-Application report in April 2019.

6. Although the applicant says that his agent was then unable to contact the Council despite repeated attempts, the Council says it has no record of that and that no contact was made regarding the application between March and September 2020. Whether or not that was due to voicemail mailboxes being full and not accepting further messages as alleged by the applicant is impossible for me to judge and I can only base my decision on the evidence before me. The Council says that the breakdown in communication occurred by both parties during that time and from what I have seen that would seem to be the case.
7. The application remained live during that time. The applicant's agent says that due to the difficulties in trying to contact the Council before the pandemic, he judged the chances of contact highly unlikely and submitted a third application in June 2020 to get a response. The applicant's evidence shows that a detailed email from the Council on 25 August 2020 explained its concerns regarding the third application some ten days before the determination. That email explained that the case officer was unsure how the issue regarding the internal amenity of that bedroom could be overcome without redesigning the scheme.
8. On 26 August a request was made for the consideration of a redesigned lightwell which the applicant said would enhance daylight levels. However, that email relates to the third application. The Council did not respond to that but says that the third application omitted some of the previous amendments and was refused at the same time as this appeal in September 2020. The appellant says that the advice to change the split of accommodation came at the end of the third application and may necessitate a fourth application.
9. It is unfortunate that during the course of the first application, the Council did not refer to the issue of internal amenity to bedroom 1 of flat A. Even so, the applicant would have been aware of that issue from the Pre-Application report for the first application.
10. During the course of the second application which is the subject of this appeal, the Council's concerns regarding this issue were clearly explained, albeit at the end of the statutory time period. Even though the Council accepts that it had a role in the breakdown in communication between March and September 2020, the applicant had the opportunity to either withdraw the application or address those concerns between February 2020 and determination in September 2020 but for whatever reason, chose not to.
11. Even if the Council had communicated with the applicant during that period and had determined the application more quickly, it seems to me that the reason for refusal would have been the same and the need for the appeal would not have been avoided. It may be that, during that time, contact with the Council was not easy but it seems to me that the applicant's agent could have made greater efforts to do so. As the second application was neither withdrawn or amended again to fully address the Council's stated concerns at that point, the need for the appeal could not have been avoided.

12. On this basis, I find that the Council generally provided clear explanations for its concerns regarding the main issue in the appeal of internal amenity for bedroom 1 of Flat A in a timely manner. Although it could have been more consistent by including the issue in its concerns during the earlier part of the course of the application and could have made more effort to communicate with the applicant during the later part, that would not have made any difference to the outcome of the application and would not have negated the need for the appeal.
13. For the reason given in paragraph 3, costs cannot be awarded in relation to the first or third applications as those are not the subject of this appeal. Nor can they be awarded in relation to the period of determination of the second application, including for the Daylight Assessment report or other matters which formed part of that application process.

### **Conclusion**

14. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated and that neither a full or partial award of costs is justified.

*Sarah Colebourne*

Inspector