

Costs Decision

Site visit made on 29 June 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2021

Costs application in relation to Appeal Ref: APP/N5090/W/21/3270385 56 Hendale Avenue, Hendon, London NW4 4LS

- 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 Moshe Tsemah 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 development described as 'conversion of existing house into two, vertically split, self-contained residential units'.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. The PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is also at risk if it fails to produce evidence to substantiate each reason for refusal on appeal, or makes vague, generalised or inaccurate assertions which are unsupported by any objective analysis.
3. The planning officer's report to Committee recommended that planning permission should be granted. In making its decision, the Committee was not bound by the advice of its professional officers and was entitled to exercise planning judgement to reach a different conclusion on the merits of the proposal. Nevertheless, that fact does not absolve the Council of the requirement to provide sufficient evidence to properly substantiate its decision.
4. The Council has put forward very little information in support of its first reason for refusal concerning the use of the site and the effect of noise and disturbance on neighbouring occupiers. Its statement comments that there would be a substantial 50% increase in the number of bedrooms on the site resulting in increased residents and visitor numbers; garden usage; servicing requirements and movements. However, in reaching this view it seems that there has been little, if any, regard to the likely number of occupiers, and there is a notable lack of any objective information to corroborate concerns over the levels of activity that are realistically likely to result. Moreover, additional activity is not in itself harmful, and there is no clear evidence to demonstrate how activity that may reasonably occur would result in an over intensive use or cause noise or disturbance that would impact on neighbouring occupiers in any meaningful way so as to warrant

refusal. Despite references to policies of the development plan which I accept may be relevant to such considerations, I therefore find that the Council has failed to provide sufficient evidence to substantiate its reason for refusal. In basing its case on vague and generalised assertions which have not been supported by evidence, the Council has behaved unreasonably and the applicant has incurred unnecessary expense in pursuing the appeal.

5. The Council's second reason for refusal concerns the lack of a legal agreement to mitigate on-street parking in the vicinity of the appeal site. I have come to the view that insufficient justification for such measures has been provided with the appeal, and they would not therefore meet the statutory test of necessity as required under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended). Consequently, I consider that the Council has acted unreasonably in seeking to restrict wider parking impacts arising from the scheme without substantive evidence.
6. Turning to the matter of unnecessary or wasted expense in the appeal process however, the applicant's statement confirms that the requirement to provide a legal agreement had been agreed with the Council prior to the Committee meeting, and that had there been a resolution to grant permission, an agreement would have been entered into. A Unilateral Undertaking (UU) was subsequently submitted with the appeal, but given the foregoing it seems to me highly likely that a legal agreement would have been completed during the application process had the Council not determined to refuse permission on grounds set out within the first reason for refusal. Beyond the UU, the applicant's response to this matter at appeal has been straightforward, involving no extra supporting evidence and minimal comment other than a short rebuttal and reference to the UU. In reality, I therefore consider that there has been so little extra work in responding on this second reason for refusal that would not have been incurred in the absence of the appeal that it can be regarded as 'de minimis'. Accordingly, I do not consider that the award of costs should extend to the Council's second reason for refusal.
7. For the reasons above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

8. 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 Moshe Tsemah the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in submitting the appeal and contesting the Council's first reason for refusal.
9. The applicant 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Bowyer

INSPECTOR