The Planning Inspectorate

Costs Decision

Site visit made on 20 July 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021

Costs application in relation to Appeal Ref: APP/N5090/W/21/3266952
28 Prospect Road, New Barnet, Barnet EN5 5AL

- 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 Dr Alun Johns 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 'demolition of the existing house and erection of block of 6 2-bed self-contained flats'.

Decision

1. The application for an award of costs is refused.

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 application for costs is made on both procedural grounds, relating to the appeal process, and on substantive grounds, relating to the planning merits of the appeal.

3. The Council advise that the number of objections received to the proposal necessitated its referral to committee for a decision. This did not take place before the expiry of the statutory period for determination of the planning application, but it was due to be considered a few weeks later by the planning sub-committee on 19 March 2020. From the submitted evidence, I am unsure of the reason for this delay, but I have no basis to conclude that it amounts to unreasonable behaviour by the Council.

4. The introduction of measures intended to control the COVID-19 pandemic resulted in the cancellation of the sub-committee scheduled for 19 March 2020. The following meeting did not take place until a virtual sub-committee on 10 June 2020. The disruption caused by the pandemic could not reasonably have been foreseen, and in my judgement the time taken for the Council to establish a process to consider applications virtually following suspension of in-person meetings was not unreasonable given the need to ensure that robust procedures were in place.

5. I note the applicant's comments that while some more recent applications were considered at this first virtual sub-committee meeting, the appeal application was not. I appreciate this resulted in a small further delay to the consideration of the proposal, and the applicant's frustration. Nevertheless, the PPG notes that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage and that costs unrelated to the appeal are ineligible. Although the

applicant advises that they had paid a premium for a 'Fast Track' service, issues regarding the operation of that service are a matter between the parties.

6. The applicant is also aggrieved that they were given no opportunity to respond to factual inaccuracies in representations made to the sub-committee by an objector and a Councillor, referring particularly to comments about the typology of buildings in the area and the location of flats in relation to the site. It is unfortunate that it appears that the sub-committee were not advised of the veracity of the comments during the meeting, but the officer report which was before the sub-committee includes details of the typology of buildings nearby. From the information before me, I am not persuaded that the Council's decision was unduly influenced by these statements overall so as to amount to unreasonable behaviour, nor that the Council would have been likely to have reached a different decision had they been corrected.

7. Turning to consider substantive matters and the effect of the proposal on local character, I acknowledge that the Council has not offered detailed analysis to counter that provided within the applicant's evidence. Its suggestion that the scale of the development would be greater than any of the neighbouring properties is also perhaps overstated given buildings of similar overall size at 30/32 and 34 Prospect Road. Nevertheless, the effect of a proposal on the character and appearance of an area depends on an overall assessment taking into account individual factors including for example the footprint, bulk and mass of development, the building line and provision of parking; rather than each element taken in isolation. While I have ultimately come to a different conclusion, this is a matter of planning judgement, and I find that the Council's evidence adequately substantiates its position with appropriate reference to relevant policies and guidance.

8. The Council's second reason for refusal refers to the loss of a family dwelling in a road characterised by houses. As my Appeal Decision records, I disagree that Prospect Road is characterised by houses overall, and accordingly have found no conflict with Policy DM01 of Barnet's Local Plan Development Management Policies 2012 which provides that loss of houses in roads characterised by houses will not normally be appropriate. I note that my conclusion in this regard is consistent with Inspectors in previous appeal decisions noted by the applicant.

9. Be that as it may, the Council's concerns also relate to the loss of family housing in light of objectives within other development plan policies seeking a range of dwelling sizes and types including family homes to meet housing priorities and needs. The Barnet Housing Strategy 2019 (BHS) provides a more recent summary of need for different types of housing within the borough, and I note the applicant's comments that it does not distinguish between 'family-sized' and 'non family-sized' dwellings. However, section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise. I have taken the BHS into account as a material consideration, but I find that the Council was entitled to make the planning judgements that it did with regard to the provisions of the development plan and the need for different types of housing. While I am satisfied that the proposal would not unacceptably harm the provision of a mix of housing, it was not unreasonable for the Council to reach a different view, and I consider that it has adequately substantiated its objections to the proposal.

10. I note the detailed pre application process between the parties and that the recommendation to the sub-committee was that planning permission should be granted. However, the sub-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. For the reasons above, I find that it has provided suitable justification to substantiate its reasons for refusal. The Council's Decision Notice incorrectly suggests that the applicant did not seek pre-application engagement, but informal advice given prior to an application being made is in any event given without prejudice and cannot pre determine the outcome of a subsequent application, which must take account of all relevant factors. I do not therefore find unreasonable behaviour on the part of the Council in its approach to decision-taking in this regard.

11. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR