



Costs Decision

Site visit made on 22 June 2021

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 August 2021

Costs application in relation to Appeal Ref: APP/N5090/D/21/3270491 80 Golders Manor Drive, London NW11 9HT

- 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 Ms Andrea Clark for a full award of costs against the Council for the London Borough of Barnet.
 - The appeal was against the refusal to grant prior approval for the construction of an additional storey following the removal of the existing roof.
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Decision

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

The Respective Cases

2. The Planning Practice Guidance (PPG) advises that costs may only be awarded where a party has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application for costs, the Council's response, and the applicant's final comments were all received in writing and the respective cases will be familiar to the parties. Consequently, I shall not repeat the details in full and the following is a brief summary of the basis for the application and the Council's response.
4. The application is for a full award of costs based on procedural and substantive grounds. Procedurally, the applicant considers that the Council withheld information relating to the application, including the delegated officer report and that it was unreasonable to refuse the application on the basis of a lack of information without giving the applicant an opportunity to supply further details, especially as the applicant contacted the case officer during the application process. In addition it is alleged that the Council inaccurately described the site as containing two single storey buildings when there is only one and that the planning history relating to the creation of the dwellinghouse was not accurately reflected in the officer report which failed to acknowledge the documents relating to the LDC for the use.
5. Contrary to the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order), the Council considered the proposal against policies contained within the development plan and the out of date London Plan. The allegation of harm to neighbouring amenity was generalised and the report did not clarify how the harm would

- arise. Having regard to the nature of the scheme and previous appeal decision it was unreasonable to refuse the proposal in relation to impact on amenity.
6. In terms of external appearance the Council did not assess the proposal against the requirements of the Order which requires the materials to match existing and for architectural features to reflect existing elevations. A previous appeal decision identifies the limited scope for assessing such applications. Instead the Council referred to policies of the development plan and examined the impact on the wider area.
 7. Therefore, the applicant incurred unnecessary costs in submitting the appeal which could have been easily avoided had matters been handled and resolved during the application process.
 8. The Council contends that the description of the site was accurate in that there are two single storey buildings, the dwellinghouse and the neighbouring garage. The Council's point that there is no record of a replacement garage being built in the 1990s is accurate and the Council provided a full record of the planning history of the site. The applicant failed to contact the Council to see if more information was needed and provided insufficient information with the application. The delegated report was made publicly available on 10th March, shortly after the Council issued its decision. There is no evidence that the Council behaved unreasonably on the substantive merits of the appeal.

Reasons

9. In procedural terms the PPG highlights a non-exhaustive list of examples of behaviour that could lead to an award of costs against a Local Planning Authority. These include instances where there has been a lack of cooperation with other parties; delay in providing information or failure to adhere to deadlines; and only supplying information at appeal when it was previously requested at the application stage. Examples of the types of behaviour that may lead to an award on substantive grounds include refusing an application which should clearly be permitted having regard to all material considerations, failure to produce evidence to substantiate reasons for refusal, reliance of vague or generalised assertions and refusing matters capable of being dealt with by condition.
10. In this case, the evidence before me does indicate that there was a lack of communication from the Council at various stages of the application. Emails were sent to the case officer on 26 January and 09 February to ask if any further information was required and I can find no evidence of a response. Consequently, I can understand the applicant's frustration that one of the reasons for refusal related to a lack of information relating to the point at which the dwellinghouse was constructed. If the Council had concerns over the information provided it had opportunity to request further information but failed to do so.
11. The lack of communication and cooperation in that respect does appear unreasonable on the face of the evidence before me. However, I am not satisfied that led to unnecessary expense. Essentially, the parties took a different view of the meaning of the Order in relation to what constituted the construction date of the dwellinghouse. The Council are of the view that relates to the date of construction of the original building (the garage) whereas the applicant considers it to be the point at which the work to enable it to be

used as a dwellinghouse was completed. As noted in my associated decision, the Order is not explicitly clear how that matter is to be interpreted in the case of buildings that were erected prior to 01 July 1948 but subsequently converted.

12. As a matter of fact and degree I found in favour of the applicant on that point but it was a balanced judgement. It was not unreasonable for the Council to take a different view, especially having regard to the lack of any relevant case law on the point and the fact that the changes to allow upward extensions have only recently been brought into the Order. Thus, even if the Council had requested further information relating to the details of the conversion, it is unlikely that would have led to a different decision or avoided the need for the appeal.
13. The officer report did not highlight the certificate of lawful use for the dwellinghouse within the site history. It is not clear why. However, that information was known to the applicant and the Council's actions did not result in key information being withheld. The Council did not dispute the date at which the building was converted but took a different view as to whether that should constitute the point of construction. Consequently, for the same reasons given above, the failure to refer to the full history did not lead to wasted expense.
14. It is clear that the neighbouring garage was not part of the proposal and it was inaccurate for the Council to describe that structure as being part of the application site. Nonetheless, that didn't impact on the decision and the applicant has failed to identify that the error led to any wasted expense.
15. In other procedural matters there appears to have been a delay between the decision being issued and the delegated report being made available. The decision was issued on 01 March and the report is dated 22 February. The Council maintain that the report was made available on its website on 10 March but the applicant suggests it was not available as late as 07 April. From the information before me I cannot ascertain exactly when the report was made available. Nonetheless, the applicant requested a copy on 02 March and the Council seemingly failed to respond to that request. As with the failure to respond to correspondence during the application process that displayed a lack of cooperation which is evidence of unreasonable behaviour.
16. However, the appellant was still able to submit the appeal less than a week after the decision was issued and provided a full statement in response to the Council's reasons for refusal. Whilst unreasonable, the procedural failings of the Council did not lead to significant delay or additional cost.
17. On substantive grounds, the heightened building would have been situated close to the boundaries of neighbouring dwellings and a matter of judgement was required as to the impact in terms of any loss of outlook and privacy. In particular, the rear window would have been very close to the boundary and, although partially obscured, would be noticeable from neighbouring gardens. Consequently, whilst I took a different view, the Council's position was not unreasonable.
18. For the reasons given in my associated decision, it was appropriate for the Council to consider the external appearance of the proposal in the wider context and I am of the view that the terms of the Order do not exclude such

an assessment. Planning permission is granted for upward extensions through the Order subject to prior approval being obtained and such prior approval should not be determined on the basis of the Development Plan, as would be the case for an application for planning permission. Nonetheless, development plan policies may be of relevance as evidence to support a planning judgement insofar as it relates to relevant matters of prior approval.

19. Reading the delegated report in the round I am satisfied that the judgement was made in the context of the limitations of the Order and that the development plan policies were provided as context. The Council did not stray into matters that were beyond the scope of the prior approval regime.
20. In effect, the differences on substantive matters were over matters of planning judgement and there is no evidence that the Council behaved unreasonably in that respect. Overall, despite the apparent lack of cooperation from the Council during the application process and immediately after the decision was issued, this was a case where there were fundamental differences between the parties which could only have been considered at appeal. It was not a case that should clearly have been approved having regard to all relevant considerations and the Council substantiated its arguments on the substantive points. The Council's actions did not therefore lead to any unnecessary expense.
21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and, accordingly, I shall refuse the application.

Chris Preston

INSPECTOR