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## Costs Decision

Site visit made on 26 October 2021

**by B Davies MSc FGS CGeol**

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

**Decision date: 11 NOVEMBER 2021**

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### **Costs application in relation to Appeal Ref: APP/N5090/D/21/3277274 45 The Ridgeway, Golders Green, London, NW11 8QP**

- 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 Mrs C Wolfish 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 the erection of a rear ground floor extension.
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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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant submits that the Local Planning Authority (LPA) has acted contrary to case law, failed to produce evidence to substantiate the reason for refusal and delayed development that should have been permitted. These issues overlap and I therefore consider them together below.
4. The LPA recognises that the development permitted via the Prior Notification determination is a fallback position in accordance with case law. It then follows a 'local protocol' that requires the development be near completion to have confidence that the applicant has a 'genuine intent' to fit out and occupy the extension. Based on the information before me, it is my understanding that for this reason the LPA then gave the fallback position effectively no weight.
5. It is not in dispute that the weight given to material considerations is a matter of judgment. However, it is imperative that such a judgment is explicable and reasonable.
6. The appellant has made it clear since at least 2020 that it was their intention to complete a rear extension of 4.9 metres depth on the boundary of No 47. Substantial building works have already been undertaken towards achieving this aim. On any reasonable reading of the case, there is clearly a greater than theoretical possibility that the permitted development would be completed.

7. I have no evidence before me that the LPA took these strong arguments into account when coming to its judgment, instead relying on a local protocol that automatically gives negligible weight to the fallback position.
8. No satisfactory explanation for this rule has been provided. I acknowledge that if a development is nearly complete then it must necessarily be of substantial weight as a fallback position. However, this rule does not allow for the spectrum of weights available for the various states of completion or intent, which is required to undertake a genuine balance.
9. To my mind 'genuine intent' must be assessed on a case by case basis because a judgment in this regard must necessarily be the product of many factors. I do not find it reasonable that the LPA relied entirely on a local rule of thumb for the decision, rather than weighing the factors specific to the case.
10. In addition, the appellant is clear that in the absence of permission being granted the permitted development would be completed. Permission would then be sought to build the remaining section, adjacent to No 43. Given that this aspect was deemed acceptable in 2019, and in the absence of any changes along this boundary or evidence that the overall bulk of a full width extension is an issue, I find it hard to contemplate that such a proposal would likely be refused.
11. This would therefore likely result in the exact same outcome as the current application, but via an administratively tortuous route, incurring expense for both parties, in addition to delays for the applicant. I conclude that this is effectively a second fall-back position that should have been taken into consideration in the balance.
12. The lack of weight given to the fallback positions is neither adequately explained nor reasonable. I conclude that this has resulted in an unnecessary appeal and has delayed the development. In light of this, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in PPG, has been demonstrated. An award for costs is therefore justified.

### **Costs Order**

13. 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 Mrs C Wolfish, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to that 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.

*B Davies*

INSPECTOR