Costs Decision

Site visit made on 7 July 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Costs application in relation to Appeal Ref: APP/N5090/C/20/3264231
Flat 1, 24 Loring Road, Whetstone, London N20 0UH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Francis Waters for a full award of costs against the Council of the London Borough of Barnet.
- The appeal was against an enforcement notice alleging erection of a conservatory

Decision

1. The application for costs is refused.

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. The appellant considers that the Council should pay the appellant's costs even if the appeal is dismissed, as he considers that the Council has behaved negligently, particularly with regard to its behaviour prior to the refusal of the first planning application.

3. The applicant considers that the Council failed to engage in dialogue with him during the course of the planning application to seek solutions to overcome issues with the development and instead issued a refusal notice. The applicant had then considered appealing the planning refusal but states that the enforcement notice was issued within a matter of days.

4. With regard to seeking solutions, the appellant was at this stage adamant that the depth of the conservatory would remain the same. The fundamental difference in view between the parties on this matter strongly suggests that the probability that dialogue would have resolved matters to the satisfaction of both parties at that stage was unlikely.

5. In response, the Council states that it has acted appropriately at all times and that the enforcement notice was issued more than 2 months after the date of the planning refusal. The Council considers that it was expedient to take enforcement action and did not delay doing that where it considered that there was harm. The Council was given no indication that "appropriate remediation was imminent." The Council also adds that it was open to the appellant to apply and have granted a planning permission for a modified scheme and ultimately that is what the appellant did with a further revised scheme being approved in July 2021.

6. The appellant raises issues about measurements and the absence of any site visits. The Council refers to Covid restrictions preventing visits taking place. Whilst it is unfortunate that the Council was unable to undertake a site visit to the rear garden, images were supplied which show the extent of the development and I was able to visit the appeal site and have subsequently dismissed the appeal. The disagreement about measurements and the absence of a site visit are not therefore matters that constitute unreasonable behaviour that have led to unnecessary or wasted expense.

7. The appellant has said that the Council acted out of motives not related to planning matters but instead for budget expediency or with other inappropriate motives. However, the Council had fundamental planning objections to the first retrospective planning application for the development and considered it to be expedient to issue the notice and the appeal against that notice has been dismissed. The Council's motive therefore was to remedy a breach of planning control.

8. The appellant considers that the Council should pay the costs of the appeal even if the appeal is dismissed. However, the dismissal of the appeal means that development that existed and that was enforced against was a breach of planning control that the Council considered it expedient to enforce against. The amended scheme that has now been approved is materially different to the development, the subject of the notice.

9. For all the above reasons, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. An award of costs is therefore not justified.

E. Griffin

INSPECTOR