



Costs Decision

Site visit made on 7 July 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Costs application in relation to Appeal Ref: APP/N5090/C/21/3266329 and APP/N5090/W/20/3257356

Land at Ground Floor, 8 Millway, London NW7 3RE

- 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 Maggie Andi for a full award of costs against the Council of the London Borough of Barnet.
 - The appeals related to a enforcement appeal and a planning appeal relating to the erection of a single storey front porch extension
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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.
3. The applicant considers that the Council did not act in a reasonable manner in refusing the planning application when the development proposal was in accordance with the development plan policy and the Framework. She cites examples from the PPG where Councils are at risk of an award of costs if they including preventing development which should be clearly permitted and making vague, generalised, or inaccurate assertions about the development's impact.
4. Furthermore, the Council failed to take into account relevant policies. In response, the Council considers that the development is in conflict with the adopted policies and guidance and that the design is not in keeping with the development plan policies. The Council assessed the Residential Design Guidance to be relevant despite the development relating to a non – residential use. The building as a whole is not solely commercial and the building is in a residential street. I have found the Guidance to be less relevant but the Council's reason for relying upon it was an arguable position and is not unreasonable behaviour.
5. The applicant also alleges that the Council did not consider the need for modernisation, the use of the premises as an NHS prescription hub and the need for floorspace.

6. The Council states that it did take into account the use although I agree that there is limited information in the Council's evidence about the details of the work of the practice. However, the Council was aware of the use of the premises and I have concluded that the considerations put forward by the appellant did not outweigh the harm that I found. I do not find the Council's assessment to be unreasonable and I reached a similar conclusion in dismissing the appeal.
7. The applicant alleges that the Council also placed too much emphasis on the application being retrospective and failed to take into account the fall back of no residential appearance irrespective of the outcome of the appeal. There is no evidence before me that the retrospective nature of the development was significant to the Council's decision leading to unreasonable behaviour.
8. There is no dispute that the appeal premises forms part of a semi-detached property that was previously a single dwelling. The Council assessed the premises based on their current use and made comparisons between the previous porch and the development. From the evidence before me, the Council considers that the premises were visually different prior to the development taking place and did apply the appropriate baseline.
9. The Council considers that the planning appeal could have been avoided but if that is not found to be the case then the Council should have waited for the Section 78 appeal to be determined so the costs of the enforcement appeal could have been avoided.
10. The Council considered it expedient to issue the enforcement notice so that the matter could be resolved at the earliest opportunity and proceeding in this manner avoided successive appeals at different times. There is no requirement for the Council to await the outcome of a planning appeal before issuing an enforcement notice. I agree that whether or not it is expedient for the Council to serve an enforcement notice is a matter for the Council and does not constitute unreasonable behaviour.
11. 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