The Planning Inspectorate

Costs Decision

Site visit made on 18 January 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2022

Costs application in relation to Appeal Ref: APP/N5090/C/21/3272586
1 Elmbank Avenue, Barnet EN5 3DU

- 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 Mr John Fairbairn for a partial award of costs against the Council of the London Borough of Barnet.
- The appeal was against an enforcement notice alleging without planning permission, the use of a rear garden outbuilding as a self-contained residential dwelling.

Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. I consider the applicant's grounds for making the application relate mainly to the Council "introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen".[1] This is in respect of the effect of the development on the living conditions of neighbouring occupiers, having regard to privacy, noise and disturbance. There is a second point made to support the claim that the Council's behaviour has been unreasonable and this relates to the Council's response to the ground (f) appeal in paragraphs 5.9-5.13 of their Statement of Case.

4. With regard to the first matter, from my reading of all the submissions, including those from third parties, I find that these are not new issues. In the first instance they are mentioned in the Council's Officer report prior to the issue of the enforcement notice. Later, third parties write about them in their responses to the appeal and, as such, they should have come as no surprise to the applicant. It was open to him to respond to these claims when making his appeal. Secondly, as expressed in the Council's Statement of Case, they are referred to following a summary of one of the appellant's points as a response to that point. The Council describe this as dispelling an assertion, which they are entitled to do. For these reasons I find that unreasonable behaviour has not been demonstrated.

[1] Planning Practice Guidance ID 16-047-2014306

5. With regard to the second matter, it appears that the appellant has misunderstood the Council's case. Paragraph 5.9 sets out the requirements from the notice. Paragraph 5.10 is a submission that the requirements would remedy the breach of planning control. Paragraph 5.11 merely summarises the appellant's point, that a bathroom could form part of an ancillary use of the outbuilding in relation to the host property. The Council do not state that they agree with this point and the last paragraph is simply a request to dismiss the appeal. It is the penultimate paragraph comprising one sentence that contains the Council's actual response to the ground (f) appeal. It is a naïve response but, in my view, it does not demonstrate that the Council has behaved unreasonably.

Conclusion

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the guidance, has not been demonstrated.

D Fleming

INSPECTOR