
Costs Decision

Site visit made on 12 May 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2022

Costs application in relation to Appeal Ref: APP/N5090/W/21/3286279 Warwick Court, Birkbeck Road, Mill Hill, London NW7 4BL

- 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 Mr Roger Childs for a full award of costs against the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for a first floor rear extension. Alterations and extension to roof including raising the roof ridge height, partial hip to gable to both sides and front dormer window. Associated alterations to fenestration to side elevations to provide 1no additional self-contained flat with rear terrace and glass balustrade at roof level.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant claims that the Council acted unreasonably in so far that they did not give appropriate weight to the previous appeal decision at the site¹. I am, however, satisfied that the Council did reasonably take this matter into account in reaching its decision to refuse planning permission. Indeed, the previous appeal decision is referenced and considered in the delegated officer report and the appeal statement.
5. Fundamentally, there are differences between the proposed development in the previous appeal and the current application that entitled the Council to make another planning judgement. The Council took the view that the previous

¹ APP/N5090/W/18/3205455

appeal scheme represented considerable works to the host property and that the current proposal, whereby increasing the size of the development, would 'tip the balance' rendering the scheme unacceptable. Although I have come to a different view, the Council made a reasoned argument for their decision and were entitled to 'draw the line' as a matter of planning judgement.

6. It also follows that it is not unreasonable for the Council to take the view that the current application is contrary to development plan policies which the different, previous scheme was found to comply with.
7. Therefore, it was essentially a matter of planning judgement in terms of the weight to be given to the previous appeal decision. Although acknowledging the previous appeal decision in their own decision, the Council considered that the revised scheme was such that it resulted in the judgement that it was now contrary to development plan policy, this does not mean that it did not weigh the matter in the overall planning balance or, in this regard, that it acted unreasonably.
8. It appears that there may have been an element of confusion in relation to the provision of balconies to the first-floor units. The applicant outlining that they are existing and the Council appearing of the view that they were proposed. What is clear is that there were alterations to the first-floor balconies that required an assessment to be made. More importantly, it is clear from the evidence that this was not the sole concern of the Council. I therefore do not consider that the Council would have reached a different conclusion on the application even if this matter was agreed by all parties and thus avoiding the appeal.
9. I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the development which justified its decision. The applicant had to address those concerns in any event.
10. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense. I find nothing to suggest that a decision was not reached on the basis of the planning merits of the development.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated. Therefore, a full award of costs is not justified.

A M Nilsson

INSPECTOR