

Costs Decision

Site inspection on 3 August 2022

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Costs application by Mr Krenar Jashari made in connection with appeals ref: APP/N5090/X/21/3274224; APP/N5090/X/21/3274225 - No. 61 Blessbury Road, Edgware HA8 0SU

- The application was 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 was made by Mr Krenar Jashari for a full award of costs against the London Borough of Barnet Council.
 - The appeal was made by Mr Krenar Jashari against the refusal by the Council to issue a certificate of lawful development in respect of 2 separate proposals for the construction of a rear outbuilding in the rear garden of the dwelling at No. 61 Blessbury Road, Edgware HA8 0SU.
-

Decision

1. The application for an award of costs is not allowed.

Submissions made by Mr Krenar Jashari

2. The Council unilaterally amended the description of the development and assessed it without regard to the home office element. Their starting point of decision making was then fundamentally wrong.
 3. The Council assessed the application on its planning merits, not the provisions of Class E.(a) Schedule 2 Part 1 to the General Permitted Development Order 2015, (the Order). Their main criterion was not an assessment of the reasonable requirement of the incidental uses of the outbuilding, but that the floor area of the outbuilding exceeded the footprint of the main dwellinghouse. Ideally, according to the Council, it ought to be half that footprint.
 4. The Council failed to follow precedent and established case law guidance provided in previous s.195 appeal decisions. They did not approach decision making with an open objective mind on both the appeals. The Council had unnecessarily prevented or significantly delayed issuance of a lawful development certificate for permitted development under both appeals.
-

Submissions made by the London Borough of Barnet Council

5. The Council acted reasonably throughout the application process. The Appellant did not detail the proposed uses of the outbuildings. The description as proposed by the Appellant on the application forms had subsequently validated the applications. The delegated reports gave explicit weight to the uses of the outbuildings as described therein. The Council acknowledged that when determining the incidental nature of an outbuilding the physical size is not always conclusive. The uses proposed were reviewed individually to determine whether their scale as depicted within the outbuilding could be considered to justify the physical extent of the structure as remaining incidental to the main dwellinghouse.
6. The Appellant said the applications were determined on planning merit. While it was noted that information provided in correspondence was not in the wording as set out in the Order, the case officer was providing indicative guidance on the interpretation of Class E in respect of what might be deemed the acceptable scale for just a gym and storage room contained within an outbuilding.
7. Previous appeal decisions submitted within the Appellant's statement had been considered. It appears that all of the appeal decisions cited proposed an outbuilding which involved multiple uses. Unlike those previous decisions, the proposed outbuildings here did not contain uses to a scale considered to have been justified as incidental to the main dwellinghouse.
8. Both outbuildings were refused due to the scale of their uses not being incidental to the main dwellinghouse. Council actions did not fail the test in *Wednesbury*. They had acted reasonably in all instances when determining both applications. The Applicant should not have his costs.

Inspector's conclusions

9. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
10. In my view, there is no justification to make an award of cost to the Appellant against the Council. The complaints made in this application were mainly based upon non-acceptance of the decisions made on the two applications for certificates of lawfulness. I disagree with the assertion that the Council appeared to be unduly guided in their decision making on the basis of a comparison of the sizes of the existing house and the proposed outbuildings. Whilst it is relevant to have regard to a comparison of the size of the proposed buildings with that of the existing house, it is not decisive, nor did the Council act as if it were.
11. I decided that the smaller of the 2 proposed outbuildings would be lawful under Class E. But the Council's decisions that neither would be lawful was not perverse or unreasonable. It is the case that two decision makers can legitimately come to different conclusions based upon the same evidence. That is especially so here, where an assessment needs to be made as to whether the outbuildings nature, scale and purposes are considered to be incidental to the enjoyment of the house.

12. Nothing in the manner of the Council's handling of the applications, their decision making or their behaviour amounted to a reason or reasons why costs should be awarded against them.
13. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. In my view, that was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against the Council is not justified.

COSTS ORDER

14. No order as to costs is made.

John Whalley

Inspector