
Costs Decision

Site visit made on 12 September 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Costs application in relation to Appeal Ref: APP/N5090/W/22/3291989 Flat 1-6, St Edwards Court, Finchley Road, London NW11 7NB

- 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 Acestar Consultants Ltd for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of an application for Prior Approval for an additional storey at third floor level to provide two self-contained flats.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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. A Council would be vulnerable to costs if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The substantive costs application alleges that the Council considered matters that were outside the legislative scope of Schedule 2, Part 20, Class A of the Town and Country Planning Order 2015 (as amended).
4. The claim asserts that the Council:
 - incorrectly considered the effect of the proposed development on the wider context rather than only considering its impact on the host building, and
 - failed to recognise that the proposed increase in height is an inherent component of permitted development rights.
5. In my main decision I found that a recent court judgement¹ provided useful guidance in these matters. Mr Justice Holgate rejected the claimants' submissions that the "external appearance" control is confined to an assessment of the impact of that appearance on the subject property itself, as opposed to including its surroundings.

¹ CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC [2022] EWHC208 (Admin)

6. He stated that "There is nothing in the language of the GPDO 2015 to justify this construction. Paragraph AA.2(3)(a)(ii) simply requires a developer to obtain prior approval of the 'external appearance of the dwelling house...'. The Order does not contain any language to the effect that the decision-maker may only assess the impact of that external appearance on the dwellinghouse itself. That interpretation involves reading additional words into the legislation when there is no legal justification for doing so. The LPA is therefore empowered to assess and control all relevant aspects of that external appearance, and not simply those which impact on the subject building".
7. This judgement presents an unequivocal answer that addresses the applicant's first claim. This demonstrates that the Council behaved reasonably in taking the wider context of the appeal site into account when assessing the effect of the scheme on the external appearance of the building.
8. Furthermore, to the matter of principle, Mr Justice Holgate found that "a developer's ability to implement permission remains latent until prior approval is granted for a specific proposal on a specific site. Accordingly, in a prior approval case, planning permission accrues or crystallises upon the grant of that approval, not before". Therefore, the permitted development 'right', in this case, is a two part process both of which requiring satisfaction in order to confirm that the principle and detail of a proposal would meet the requirements of the Order.
9. I see no reason why this Judgement should not be applied to the appeal case. Consequently, the Council's decision in these respects was not fundamentally flawed or without foundation as to represent unreasonable behaviour.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Ben Plenty

INSPECTOR