
Costs Decision

Site visit made on 16 August 2022

by R Naylor Bsc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 OCTOBER 2022

Costs application in relation to Appeal Ref: APP/Z5060/W/21/3290012 68 Ivyhouse Road, Dagenham RM9 5RR

- 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 Mohamed Bharadia for a full award of costs against the Council of the London Borough of Barking and Dagenham.
 - The appeal was against the refusal of planning permission for a proposed 1 bed 1 person dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 appellant submits that the Council has acted unreasonably on substantive and procedural grounds in that it has failed to have regard to the decision of the High Court to quash the original appeal decision¹. Furthermore, the appellant contends the Council has failed to provide an accurate evaluation of the proposal and erroneously relied on the Inspectors decision, subsequently quashed, as a material consideration despite being aware of the outcome of the High Court challenge, as such they consider this constitutes unreasonable behaviour.
4. Section 70(2) of the Town and Country Planning Act 1990 as amended, is clear that, *'in dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations'*.
5. The High Court ruling to quash the Inspectors decision was communicated to all parties on 2 August 2021, although the Council issued their subsequent refusal two days later on 4 August 2021. The Council has highlighted that "BeFirst" carry out their statutory planning function on their behalf, and that the High Court ruling was received during the final checks before this decision was issued. Nevertheless, at that time the Council was reasonably aware of the High Court challenge. In my view they could have been more cautious before relying as they did in their officer report, on that previous Inspector's reasoning

¹ Appeal Ref: APP/Z5060/W/20/3249128

in those circumstances. Although I acknowledge, the Inspectors original decision was quashed on the basis that he did not supply adequate reasons for his decision, this would not prejudice a new Inspector in the redetermination of the appeal reaching a similar conclusion.

6. Nevertheless, the Council should have clearly demonstrated on planning grounds why the proposal was unacceptable and provide clear evidence to substantiate that reasoning. In my appeal decision, I have reached the view that the proposal would not result in harm to the living conditions of the adjoining dwelling with particular reference to overshadowing. Little evidence was put forward by the Council to support their reason for refusal or establish what levels of overshadowing existed, and if so, how this would be made worse by the smaller proposed development. Nor has the alleged harm to amenity been substantiated other than a significant reliance on the dismissed (now quashed and allowed) appeal decision.
7. I therefore accept that the applicant might reasonably have expected the Council to take the High Court ruling of 2 August 2021, on board and to have amended its decision in view of that. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and the relevant material considerations, the development proposed could reasonably have been permitted. The Council did not do so, and despite the arguments advanced in the Council's costs statement, I consider that the Council acted unreasonably in failing to do so.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Barking and Dagenham shall pay to Mr Bharadia, the costs of the appeal proceedings described in the heading of this decision, and such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Robert Naylor

INSPECTOR