



Costs Decision

Site visit made on 29 December 2022

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Costs application in relation to Appeal Ref: APP/N5090/D/22/3303572 28 Downage, Hendon, London NW4 1AH

- 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 Uriel Biton for a full award of costs against the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for the erection of a part single, part two-storey front, side and rear extension including new front porch, alterations to the pitch of the roof including the insertion of roof lights and the creation of side and rear dormer windows to facilitate a loft conversion and the creation of a basement under the footprint of the house including rear light wells.
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Decision

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

Reasons

2. The National 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 or wasted expense in the appeal process. Costs can be either procedural where they relate to the process of determining the application; or substantive, which relate to the issues arising from the merits of the appeal.
3. The PPG makes clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and not on *'vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.'*¹ Additionally a Council is at risk of 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'*². As both of these grounds are interrelated in this particular circumstance, I shall deal with them together.
4. The majority of the Council's case revolves around whether the application being assessed is a full application or a householder application. As I have previously commented upon within the appeal, it is not for me in an appeal to make a determination on what is the correct application form, but rather I am to make a decision on the planning merits of the scheme.
5. The appeal documents state that instead of invalidating the application, the Council validated the application as a householder application. Whilst I can

¹ PPG, 049 Reference ID: 16-049-20140306, Dated 06 03 2014

² Ibid

empathise with the Council that they felt it required a full application, there is nothing stopping the Council from requesting information such as an ecological survey for the presence of bats as this appears to be one of the concerns from the Council as stated in their Officer Report. There is nothing in the planning application documents which would suggest it reasonable to request an ecological survey, there appears to be no environmental designations applicable to the site, nor is there any commentary from Ecological colleagues with regards to the need for an ecological survey. Even if this was a full planning application, the request for an ecological survey based upon the evidence provided would be seen to be unnecessary and unreasonable; in other words, it is not a full application which deems that reports of every nature are reasonable to request, but must be based upon evidence of that need. There is also no evidence that the Council requested further structural surveys regarding the basement construction, or transport information which it has the ability to request.

6. Given that the Council were satisfied that the scheme was appropriate and in accordance with the Development Plan (except for the front windows which were found to be appropriate in the appeal), the Council took 6 months to make a determination which is an extraordinary amount of time for what is an uncomplicated and relatively straightforward application which the Council admittedly said was compliant with the development plan. In the reasons for refusal the Council has utilised policies such as ecology and transport policies which had no discussion within the Officer Report, with there being no basis within the appeal or planning applications documents to substantiate a reason for refusal. Additionally, the Council said that the design and living conditions were appropriate, and yet chose to refuse the application on policies such as living conditions, housing standards, and design.
7. The reason for refusal is at best, spurious, given the lack of consideration to the proposal's impact, which are unsupported by an objective analysis with the listing of policies, some of which do not appear to have been considered and which the proposal clearly complies with. The length of time to make a determination of the application at 6 months is also very poor given the emphasis of the planning system to prevent delays and approve applications which clearly should be permitted. Under both grounds it has been demonstrated that the Council has behaved unreasonably in line with the PPG and that this appeal in its entirety could have been avoided.

Costs Order

8. 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 London Borough of Barnet shall pay to Mr Uriel Biton, the costs of defending in the appeal proceedings.
9. The appellant is now invited to submit to the London Borough of Barnet, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Somers

INSPECTOR