



Costs Decision

Site visit made on 10 January 2023

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Costs application in relation to appeal ref. APP/N5090/D/22/3311697 Land at 26 Derwent Avenue, Barnet EN4 8LX

- 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 Mrs Gosia Thomas for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was made against the refusal of planning permission for "*Erection of a rear outbuilding (retrospective application)*".
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Costs decision

1. The application for a full award of costs is refused.

Reasons for the costs decision

2. The Government's Planning Practice Guidance (the Guidance) advises that all parties in appeals are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. This application for costs has been considered on its merits in the light of the costs advice found within the Guidance, the appeal papers, the costs correspondence and all the relevant circumstances relating to the planning application and the appeal. The parties are also referred to my appeal decision.
4. This application for an award of costs is made on a substantive basis, relating to the planning merits of the appeal. It said that the refusal of permission has put the appellant to the unnecessary costs of pursuing an appeal when the scheme should have been allowed, in line with the recommendation of the Council's planning officers, at the application stage. Such conduct is alleged to be unreasonable to the extent that the applicant's costs should be paid accordingly.
5. The Guidance confirms that local planning authorities are at risk of an award of costs if they unreasonably refuse a planning application, for example by 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.
6. The Council's decision to refuse planning permission was taken contrary to the recommendation of its planning officers. Even though Councillors are not duty bound to follow the advice provided by their professional officers, if a different

- decision is reached, the Council should show on planning grounds why a scheme is unacceptable and offer clear evidence to substantiate that reasoning.
7. I consider that the Council's costs claim rebuttal is comprehensive in its scope and presents a rational defence. The Council's minutes of the relevant Planning Committee meeting record that the planning officer introduced the report and presented slides of the development that had been completed. Members could therefore see the development the subject of the application. They also had due regard to the observations of neighbouring residents. There were discussions about the planning issues raised by the proposal. The decision was supported by various planning facts with reference being made to relevant development plan policies and a supplementary planning document.
 8. The Council's objections to the rear outbuilding, as set out in the single reason for refusal on the face of the decision notice, were twofold. These concerned the impacts upon the area's character and appearance and the residential amenities of 24 Derwent Avenue. The Council's reasoning on these matters as a whole did not lack substance or objectivity. The appellant disagreed with the Council's position on both of them, but these involved matters of planning judgement which were finely-balanced, as I found in making my own decision and as the Planning Committee no doubt found in coming to a decision that was not unanimous.
 9. The visual impact a development may have on an area or a neighbouring dwelling is ultimately a subjective judgement and as such it is inevitable that opinions will vary. Nevertheless, the Council was entitled to reach the decision it did on the planning merits of the particular case, having found that the scheme did not comply with the development plan and that it was not development which should clearly be permitted. Although I have disagreed with the Council's Planning Committee and allowed the appeal, this does not suggest that the Council's reason for refusal was irrelevant or that their case was unjustified or deficient in any way.
 10. The Council's approach to the available facts did not fully match any of the types of behaviour listed in the Guidance that may give rise to a substantive award against a local planning authority.
 11. This application for costs falls short of demonstrating that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has occurred. An award of costs is not justified in this case.

Andrew Dale

INSPECTOR