



Costs Decision

Site visit made on 14 August 2023

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Costs application in relation to appeal ref. APP/N5090/D/23/3320473 Land at 40 Corringham Road, London NW11 7BU

- 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 Thomas Levinson 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 "*Proposed basement under existing building and rear patio – with light-well to front elevation*".
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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. The costs application appears to be made on both a procedural basis and a substantive basis. The gist of the procedural case is centred on the very protracted nature of the planning process which included various technical reports having to be submitted and other issues addressed as a result of the Council allegedly giving undue weight to the concerns of objectors. The substantive case made derives from the decision of the Planning Committee, taken contrary to the officer's professional advice, to refuse planning permission on the grounds of cumulative overdevelopment, after the intervention of the Council's Legal Officer. It is said that the Council refused planning permission without any logical, policy or technical reason.
5. That the Council took well over a year to determine this householder planning application would undoubtedly be a source of frustration for the appellant. However, the appellant had the right of appeal against non-determination of the application within the relevant time limit, which would have been well before the submission of the report by H Fraser Consulting Limited in June 2022. This was not exercised. If the appeal had been against non-determination, the onus would have been on the Council to explain their

- reasons for not reaching a timely decision, and why permission would not have been granted had the application been determined within the relevant period.
6. Whilst I cannot speculate on the timing of the submission of the report by H Fraser Consulting Limited, it raised concerns about drainage, neighbouring ground water conditions and flood risk which are material planning considerations. The knowledge and experiences of local residents confirmed these concerns. I found that the Council was justified in seeking the submission of further information. This request was also evidently in accordance with the Council's *Supplementary Planning Document: Sustainable Design and Construction*. If the absence of a flood risk assessment and drainage strategy, a basement impact assessment and other supporting material had persisted, it may have led to another reason for refusal. The submission of the further information inevitably took time as did its scrutiny by the Council's Surface Water Management Team. I am not aware of any information the Council has provided which has been shown to be manifestly inaccurate or untrue. The Council exercised its duty to determine the planning application in a reasonable manner. There is no procedural basis for an award of costs.
 7. In my experience, the Legal Officer at the Planning Committee on 21 February 2023 did not make an astonishing intervention. He simply offered sound advice to the Members that any reason for refusal must be defensible, after they had declined to accept the officer's recommendation of approval. It is well established that the issues of character and appearance, as set out in the reason for refusal, involve matters of judgement. As well as listening to the verbal representations from 2 local residents and the appellant's agent, who all focussed on the matter of flood risk, the Members had visited the site and had access to the officer's report and slide presentation and the written objections lodged by local residents. They were entitled to reach a different conclusion from their officers, providing there were reasonable grounds for doing so.
 8. The Council's reason for refusing planning permission did not lack logic, substance or objectivity. It was supported by relevant development plan policies and the *Supplementary Planning Document: Residential Design Guidance*. Even though I did not take on board the reason for refusal, this was very much on balance on the face of the evidence before me, including my observations on site. 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. There is no substantive basis for an award of costs.
 9. 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 therefore justified.

Andrew Dale

INSPECTOR