



The Planning Inspectorate

Costs & Decisions Team

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Mr Joe Henry
Henry Planning Limited
163 Church Hill Road
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Barnet
EN4 8PQ

Your Ref:

Our Ref: APP/N5090/C/22/3296688

Date: 21 November 2023

BY EMAIL ONLY

Dear Mr Henry

Local Government Act 1972 - Section 250(5)

Town and Country Planning Act 1990

Appeal by Mr Besnik Dedei

Site Address: Land at 95 Sherrards Way, Barnet, EN5 2BP

APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to decide your application for an award of costs, on behalf of the appellant, made on 5 October 2023 against the London Borough of Barnet (the Council). The appeal, made on 11 April 2023, is against an enforcement notice (EN), numbered ENF/0712/21, issued by the Council on 3 March 2022. The breach of planning control alleged in the EN is without planning permission, the construction of a rear canopy (as edged in red), the creation of a raised platform (as edged in blue), and associated fencing in the area between the far end of the garage and the extension (including the rear dormer canopy) and construction of an outbuilding at the rear of the garden.
2. The Council served a further EN, numbered ENF/0066/22, on 21 March 2022, relating to the appeal property but about a different development. Although there was an appeal against this EN - APP/N5090/C/22/3297808 – it does not form part of this costs application.

DECISION

3. The application is allowed in the terms set out below.

Basis for determining the costs application

4. The Planning Practice 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. PPG goes on to say that local planning authorities may take enforcement action when they regard it as expedient,

but they are expected to exercise care when deciding to issue an EN. The PPG warns that local planning authorities are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the EN in the first place or ensure that it was accurate.

Reasons

5. In her 4 October 2023 decision the Inspector found that the EN did not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. As the Inspector was unable to correct the EN without causing injustice it was invalid and was quashed. The appellant contends that, in serving a flawed EN, the Council behaved unreasonably and he has needlessly incurred costs in appealing against it.
6. The Council acted unreasonably in issuing the EN worded as it was. As a consequence of the Council serving a seriously flawed EN the appellant's grounds of appeal were not considered. As a result the appellant incurred wasted expense in the appeal process. Although the Council considers that it has behaved reasonably and that enforcement action was appropriate, it has nevertheless argued for a partial award because there was a joint appeal involving two ENs which were dealt with at the same time. The appellant submitted one supporting statement for the two ENs. As one of the ENs was upheld, part of the expense has been used and was not wasted. While the Secretary of State infers from this that the Council accepts that it did behave unreasonably in serving a seriously flawed EN, he does not agree that a partial award is appropriate. The appeal subject of the costs application and appeal APP/N5090/C/22/3297808 relate to separate and distinct developments and the evidence submitted by the appellant for the two appeals was not in common. Therefore, a full award of the appellant's appeal costs will be made.

COSTS ORDER

7. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, HEREBY ORDERS that the London Borough of Barnet shall pay to Mr Besnik Dedei his costs of the enforcement appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concern an appeal described in paragraph 1 of this letter.
8. You are now invited to submit, on behalf of the appellant, details of those costs to the London Borough of Barnet with a view to reaching an agreement on the amount.
9. A copy of this letter has been sent to the London Borough of Barnet.

Yours sincerely

Richard Holland

Authorised by the Secretary of State to sign in that behalf