Costs Decision

Hearing held on 7 November 2023

Site visit made on 7 November 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Costs application in relation to Appeal Ref: APP/N5090/C/23/3320021
43 Uphill Grove, London NW7 4NH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Sunil Patel for a full award of costs against the London Borough of Barnet.
- The appeal was against an enforcement notice alleging, without planning permission, (1) the erection of a new first floor rear extension built upon a pre-existing single storey rear extension. (2) construction of a single storey rear extension to the pre-existing single storey rear extension. (3) a roof extension including raising the ridge height and widening of the rear roofslope of the original roof, with 1no rooflight to the front elevation and a rear dormer. (4) the construction of a raised terrace with associated steps and; (5) the raising of the level of the rear garden.

Decision

1. The application for an award of costs is refused.

The Submissions

2. The costs application by Mr Sunil Patel was submitted in writing prior to the hearing. The response by London Borough of Barnet was made in writing prior to the hearing. No additional points were made, either in writing or orally, during the hearing.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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.

4. The Applicant claims that the Council behaved unreasonably in that they did not properly consider the planning merits of what had been built. They have set out a number of specific issues which they say demonstrates the Council's unreasonable behaviour. I address each of these below.

5. The decision to serve an enforcement notice is one which is a matter of judgement, in this case based on the Council's assessment of the effect of the development on character and appearance and the living conditions of neighbours. As can be seen from my appeal decision, I reached a different conclusion to the Council with regard to the effect of the development. I did not find any significant harm to character and appearance or living conditions, which could not be managed to an acceptable level by the imposition of

conditions. The fact that I reached a different conclusion does not necessarily mean that the Council acted unreasonably.

6. Elements of the development, such as widening of the rear roof slope and the first floor rear extension, are not evident from the street. However, their construction was, in part at least, facilitated by the raising of the roof ridge, which is visible from the street. Therefore, in my view, it was not unreasonable of the Council to consider the raising of the roof ridge as being inextricably linked to other elements of the development and therefore to consider these elements, in their entirety, to have an impact on character and appearance. The Council reasoning on this matter was made sufficiently clear in their written submissions ahead of the hearing, as well as being further clarified verbally during the hearing.

7. Comments made during the course of a planning application do not have the weight of planning permission and there is no question that the development as built, was unauthorised at the time the enforcement notice was served. An email from a planning officer to the appellant (dated September 7th 2021), provided as part of the appeal submissions, is brief and outlines issues with a development at the site as proposed under a planning application. I find no fundamental conflict between the email and the subsequent serving of the enforcement notice and hence the email is not evidence of unreasonable behaviour.

8. The single storey rear extension, the first floor rear extension, and the raised terrace at the appeal site did not benefit from planning permission. Therefore, despite any extensions, rear projections or terraces at either of the adjoining properties, it was not unreasonable of the Council to serve an enforcement notice which sought to address all elements of the unauthorised development.

9. As can be seen from my appeal decision, I considered that the raised terrace resulted in unacceptable overlooking of a neighbouring property. While I concluded that this overlooking could be mitigated by suitable screening, secured by conditions, it was not unreasonable for the Council to seek to enforce against the unauthorised terrace.

10. I have been presented with no certificate of lawfulness or prior approval relating to the development and am not aware that they exist. Hence, these could not be expected to be taken into account.

11. As set out in my appeal decision, I was unable to rule out that the garden levels may have been raised. I subsequently concluded that regardless of this, the current garden levels were acceptable. On this basis, despite reaching a different conclusion on the impact of any changes in garden level, it was not unreasonable for the Council to seek to secure a remedy to what they identified as a breach of planning control.

12. I have been presented with no substantive evidence that the Council made factual errors or behaved unreasonably in reaching their decision to serve the enforcement notice. Overall, I am satisfied that the Council has shown that it undertook an appropriate assessment of the planning merits of what had been built, and adequately substantiated their reasons for serving the notice, in accordance with relevant policy. Consequently, I cannot agree that the Council has acted unreasonably in this case, so there is no unreasonable behaviour to result in unnecessary or wasted expense for the Applicant.

Conclusion

13. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not justified.

H Davies

INSPECTOR