



Costs Decision

Site visit made on 9 January 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2024

Costs application in relation to Appeal Ref: APP/N5090/W/23/3324230 111 Hadley Road, Barnet, EN5 5QR

- 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 Hadley Gardens Ltd for a full award of costs against the Council of the London Borough of Barnet.
 - The appeal was against the refusal of planning permission for the demolition of existing dwelling. Erection of new dwelling to provide 4no self-contained flats with rooms in the roof space. Associated amenity space, refuse and recycling storage, cycle store and provision of off-street car parking, without complying with a condition attached to planning permission ref 20/0906/FUL dated 6 October 2022.
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Decision

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

Reasons

2. 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.
3. The case for costs essentially relies on the applicant's view that the condition should never have been attached to the permission as they consider that it is not reasonable, does not relate to the development, it is not enforceable and is not reasonable in all other respects. The applicant considers the condition to be ultra vires.
4. As set out in detail in my appeal decision, I consider that the condition in dispute meets the tests set out in the PPG and the National Planning Policy Framework. The Council has the power to impose a condition which may have the effect of modifying the development applied for. Given the wording of the condition, I found that it does not conflict with Condition 1 listing the approved plans.
5. The second principal ground for costs put forward is that the Council failed to take into account the case made by the applicant in their planning statement and did not therefore exercise their duty in regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004. I am not persuaded that the Council failed to take into account other material considerations in reaching their decision to retain the condition. The Council applied its planning judgement and concluded that the case had not been made with sufficient detail to justify a departure from the requirements of the development plan with respect to accessible dwellings.

6. The applicant comments that the Council had the opportunity to quash their primary decision by a judicial review process, and that they have chosen not to do so. The Council's choice to not seek to quash their decision, and subsequent case made during the course of the appeal, shows that they did not consider the primary planning permission to be faulty. Accordingly, there is no evidence of unreasonable behaviour in this regard.
7. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process as described in the PPG has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

L Francis

INSPECTOR