



Costs Decisions

Site visit made on 19 December 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Costs application in relation to Appeal A Ref: APP/N5090/C/23/3327972 & Appeal B Ref: APP/N5090/W/23/3326640

78 Kings Drive, Barnet, Edgware HA8 8EF

- The applications are made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mrs Poppy Pilram for a full award of costs against the Council of the London Borough of Barnet.
 - Appeal A was against an enforcement notice alleging the erection of a rear outbuilding and Appeal B, was against the refusal of planning permission for the erection of a rear outbuilding.
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Decisions

1. The applications for an award of costs are refused.

Procedural Matters

2. Given the similarities between the costs claims which have been made in respect of the above appeals, I shall deal with them together.

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. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The applicant's costs applications relate to both the process and substance of the appeal.
5. The PPG advises that for enforcement action, local planning authorities must carry out adequate prior investigation. They 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 notice in the first place, or ensured it was accurate.
6. The applicant suggests that no enforcement officer has measured the garage from the internal ground level. Had this been done, it is asserted it would have been recognised that the building complied with a Lawful Development Certificate (LDC) which has been granted at the site. The Council disputes that measurements were not taken and advises officers visited the property on 30 May 2023 and measured the height of the building.
7. Measurements were taken during my site visit and agreed with the parties. Significantly, as set out in my appeal decision, I have found the building has

not been built in accordance with the LDC. Even if measurements were not taken by the Council prior to the issue of the enforcement notice, the appeal would not have been avoided. It follows that the Council was not unreasonable in this regard.

8. The Council has previously issued an enforcement notice in respect of the site, which was subject to appeal reference APP/N5090/C/20/3249696 and the enforcement notice upheld. The Inspector also considered an appeal against refusal of planning permission for the outbuilding, reference APP/N5090/W/20/3250147.
9. The applicant suggests the appeals were dismissed on incorrect information. However, the applicant did not challenge the appeal decisions under sections 288 or 289 of the Town and Country Planning Act 1990 (as amended)(the Act) and, as set out in my decision letter, those decisions cannot now be challenged, nor costs applied for in respect of them.
10. The Council advises it withdrew the above enforcement notice prior to issuing the notice which is the subject of Appeal A. While the LDC has not been revoked, as set out in my appeal decision, it appears that the appellant would be unable to construct an outbuilding which accords with the LDC plan because of the sloping nature of the land. The Council was, therefore, not unreasonable, in my view, in withdrawing the enforcement notice, since it required the outbuilding to be modified in accordance with the LDC plan. Moreover, Appeal A concerns an enforcement notice which was issued after the enforcement notice was withdrawn.
11. The applicant asserts that the Council has given incorrect and conflicting information in relation to the cases (Appeals A and B). The applicant advises they have email confirmation that 'it' has been built correctly and refers to a recommendation on 7 October 2021, that the case should be closed. However, as explained in my decision letter, it is a fundamental principle that a local planning authority may not fetter its discretion to issue an enforcement notice by any form of agreement. Similarly, the Act sets out a comprehensive code for an appellant to determine whether planning permission is required.
12. While the applicant suggests they have recorded all calls between the officers visiting the site, and these 'calls' have not been provided in support of the appeal. The applicant suggests they can be provided if necessary, however, it is for the applicant to provide the evidence they wish to be considered as part of the appeals. I do not know exactly what the officers attending the site said, what knowledge of the site they had, or indeed what knowledge they had of the planning system itself.
13. The Council advises the officers that visited were 'not directly involved in any of the matters' and attended the site after the appellant emailed a liaison officer who has no planning background. The Council states that opinions given by officers on site and in emails are not officially binding. Indeed, in my experience, emails from local planning authorities often contain a disclaimer setting this out. I cannot, therefore, conclude the Council has been unreasonable in this regard.
14. The PPG advises local planning authorities are at risk of an award of costs for not determining similar cases in a consistent manner. From the evidence it appears that the LDC was granted on the basis that the elevation containing

the porch was not the principal elevation. The Council has since confirmed it considers that the elevation containing the porch is the principal elevation. The Council has not explained its reason for drawing a different conclusion in this regard. Its decision making with respect to the principal elevation appears inconsistent, which is unreasonable.

15. However, as set out in my decision letter, I have found the elevation containing the porch is the principal elevation. Consequently, the outbuilding is not permitted development and so the appeals have been necessary. The applicant has therefore not incurred wasted expense in presenting their cases.

Conclusion

16. Thus, for the reasons given above, I conclude unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Savage

INSPECTOR