



Costs Decision

Hearing held on 3 October and 7 December 2023

Site visit made on 7 December 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2024

Costs application in relation to Appeal Ref: APP/N5090/C/22/329787914 Land at Corringham Road, London NW11 7BT

- 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 Abhishek Agrawal for a full award of costs against the Council of the London Borough of Barnet.
- The appeal was against an enforcement notice alleging without planning permission, the construction of a part single, part two-storey side and rear extension. Also, the creation of a roof extension, comprising of a hip to gable and rear dormer.

Decision

1. The application for an award of cost is partially allowed in the terms set out below.

The submissions for Mr Agrawal

2. The costs application was made in writing before the hearing and supplemented with oral submissions during the course of the hearing. I will not reproduce the applicant's submissions here, but they are summarised as follows.
3. The Council acted unreasonably by issuing the enforcement notice in relation to the alleged hip to gable extension and the dormer extension. The evidence demonstrates that the gable roof is original and so an extension has not occurred as a matter of fact. Furthermore, the dormer extension was lawfully constructed in accordance with permitted development rights.
4. The Council failed to carry out a robust investigation prior to issuing the notice and has relied on assumptions and inadequate evidence to justify their position. Therefore, the applicant has incurred wasted expense in pursuing these elements of the appeal in relation to grounds (b) and (c).
5. The Council has failed to properly assess the impact of the proposal on the living conditions of neighbouring residents and failed to consider the applicant's fallback position. In these regards, the Council has failed to substantiate its concerns over the effects of the proposal, which amounts to unreasonable behaviour.
6. Moreover, the Council has purposely introduced additional elements to the alleged breach of planning control that differ from the description of development in a retrospective planning application at the site that was refused. This meant that the appellant incurred additional expense in paying the fee under the ground (a) appeal.

The response by the Council of the London Borough of Barnet

7. The response was made in writing and supplemented with oral submissions at the hearing.
8. The Council concedes that a hip to gable extension has not occurred as a matter of fact, and that this was an error in drafting the notice. Evidence in the form of historic satellite imagery was used to support the Council's position in relation to the timing of development on site. This demonstrates that an adequate investigation was undertaken prior to issuing the notice.
9. The Council's statement of case clearly sets out its rational for taking enforcement action and its assessment of the impact of the development on neighbouring residents. Its assessment is supported by a number of representations from neighbouring residents who support the enforcement notice. It was not unreasonable for the Council to issue an enforcement notice for development that does not have consent.
10. Consideration was given to the applicant's fallback position as established by previous grants of planning permission, but these consents are for different forms of development and therefore this consideration did not overcome the Council's concerns. The Council invited a planning application for the entire development, but this was declined by the applicant.

Reasons

11. 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.
12. The PPG advises that Local Planning Authorities (LPAs) are at risk of an award of costs being made against them if they make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. For enforcement action, LPAs 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 a more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
13. In relation to ground (b), the appeal has succeeded in part and only in relation to the hip to gable extension which did not occur as a matter of fact. This should have been easy to establish based on the Council's own photographic evidence for the site and the satellite imagery that it has produced. It was therefore unreasonable for this element to be included as part of the alleged breach of planning control. A more robust investigation by the Council would have established this sooner and saved the appellant from the wasted expense of pursuing the ground (b) appeal.
14. Turning to the dormer extension. It can be seen from my decision that I have found in the appellant's favour. The dormer extension does, on the balance of probability, meet the associated permitted development requirements for an extension of this type. The Council's assessment against the relevant permitted development criteria was seriously flawed. Its evidence to suggest that it was constructed as part of a single act of development along with other extensions

that overlap with it, was limited and insufficient. In fact, at the hearing the Council did not dispute the applicant's version of events on this matter.

15. Therefore, I also find the Council's investigations into this element of the alleged breach of planning control to have been seriously lacking and incoherent. It was therefore unreasonable for the dormer extension to be included in the allegation and so the applicant has incurred wasted expense in pursuing this element of the ground (c) appeal.
16. The Council set out clear reasons for why it issued the notice. This was amplified by a planning assessment as part of its statement of case and further argued in oral submissions at the hearing. As part of this assessment, consideration was given to the previous grants of planning permission for different types of extensions at the property. In doing so, whilst perhaps not explicitly referenced as a fallback position, I am satisfied that the Council did consider these alternative schemes as potential fallback positions. However, it is clear that both of these alternative schemes would result in lesser effects than the appeal proposal.
17. The balance of material considerations in a planning decision, and the weight to be attributed to differing material considerations, is always a matter for the decision-maker and involves the application of professional planning judgement. Despite the fact that I have disagreed with the Council's assessment of the effects of the proposal, it was open to them to apply their own planning judgment.
18. The appeal process offers a route by which legitimate differences of opinion on these matters can be independently scrutinised. Essentially, while the applicant may not agree with the Council's conclusions in these respects, this does not mean that the Council acted unreasonably in its assessment of the appeal proposal, or in reaching its conclusion. I am satisfied that the Council has provided clear reasons for why it considered the proposal to be unacceptable and therefore it was not a forgone conclusion that the development ought to have been permitted. Therefore, unreasonable behaviour on this substantive ground has not been demonstrated.
19. Furthermore, I have no evidence before me to suggest that the Council purposely introduced additional elements into the alleged breach of planning control for punitive reasons.
20. Bringing all of these points together, the Council's enforcement investigations were inadequate, and therefore resulted in an inaccurate enforcement notice being issued. This amounts to unreasonable behaviour. As a direct result, the applicant has been faced with the unnecessary expense of pursuing an appeal under grounds (b) and (c), and therefore a partial award of costs is justified.

Conclusion

21. I have found that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. I therefore conclude that a partial award of costs, to recover the expense incurred by the applicant in relation to the appeal on grounds (b) and (c), is justified.

Costs Order

22. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Barnet shall pay to Mr Abhishek Agrawal, the cost of the of the appeal proceedings described in the heading of this decision, but limited to those costs incurred in dealing with the appeal on grounds (b) and (c) only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to the Council of the London Borough of Barnet, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J M Tweddle

INSPECTOR