

Costs Decision

Site visit made on 21 March 2024

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2024

Costs application in relation to Appeal Ref: APP/N5090/D/23/3332398 23 Wickliffe Avenue, Finchley, Barnet, London, N3 3EL

- 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 Mr Mohammad Mashayekhi 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 "Part single, part two storey rear extension following demolition of existing two storey outrigger. Roof extension involving 2no rear dormers and 2no front facing rooflights. Changes to front and rear fenestrations" without complying with a condition attached to planning permission Ref 22/5735/HSE, dated 19 June 2023.
-

Decision

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

Reasons

2. 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 PPG makes clear that a local planning authority is at risk of an award of costs if it acts contrary to or does not follow well established case law.
4. The appellant submits that the Council behaved unreasonably by unnecessarily altering the description of the original development. He argues that there was no need to alter the description of development since the amendments sought and shown on the revised plans ref 18/3189/106B, 18/3189/110B, 18/3189/112B and 18/3189/11B submitted on 6 October 2023 were minor and did not propose any changes that justified or required a revised description. Hence the amendments could have been dealt with under a s73 application.
5. It is clear that the Council was aware of *Finney v Welsh Ministers & Ors* [2019] EWCA Civ 1868, dated 5 November 2019, and the limitation this placed on them in terms of amending the description of development from that originally granted. They were also aware, in line with the Finney case and having regard to the PPG in respect of such matters, that a council should consider amendments under s73 providing that the proposed changes would not amount to a fundamental alteration of the consented scheme.

6. However, instead of following that clearly established case law, the essence of which is reiterated in the PPG, the Council altered the description of development "to provide greater clarity and to avoid any doubt". This was unnecessary because the changes were clearly shown on the submitted plans, and unreasonable since once the description of development was changed the application was *de facto* beyond the scope of s73.
7. Moreover, when assessing whether the changes proposed amounted to a fundamental alteration to the consented scheme or lead to a conflict with the operative part of the original planning permission, the Council failed to follow guidance set out in the PPG that s73 "can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73". The original permission included a roof extension and the proposed alterations were in part a further extension to the roof. Although the Council's delegated report refers to additional bulk and massing, it does not explain why these are such that the proposal amounts to a fundamental alteration. I see no reason why these limited changes would be so. In addition, brick cladding was proposed to part of the front elevation. Since changes to the appearance of the front elevation were included in the original permission, the further changes did not fundamentally alter the consented scheme. Neither did any of the proposed changes conflict with it.
8. As I have found, the development applied for was therefore capable of being dealt with under s73 and, since the Council had no objection to the changes on any other grounds, had the Council followed clearly established case law, and guidance set out in the PPG, an appeal could have been avoided.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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 Mohammad Mashayekhi, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

KE Down
INSPECTOR