



Costs Decision

Site visit made on 15 May 2024

by D Cleary MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Costs application in relation to Appeal Ref: APP/N5090/W/23/3333693 2 Windsor Road, Finchley, Barnet, London N3 3SS

- 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 Adam Sussman for a full award of costs against the London Borough of Barnet Council.
 - The appeal was against the refusal of planning permission for the extensions and conversion of single family dwelling into 4 flats.
-

Decision

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

Reasons

2. The Planning Practice Guidance 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 applicant's claim for a full award of costs is principally based upon the actions of the Council in reaching its decision to refuse planning permission. Council Officers had recommended that planning permission be granted for the proposal, but Council Members took a different course of action and it is suggested that they did not provide sufficient analysis in making their decision. The application also cites the proactivity informative on the decision notice and suggests that Members of the Planning Committee would not be prepared to engage in any formal pre-application discussions. Finally, further comment has been raised that the Council has sought to introduce a further reason for refusal within its costs rebuttal¹.
4. In this case I have noted the recommendation of the Council's officers in their report to committee. The democratic process embedded in the planning system is that Council members are entitled not to accept the professional advice of officers, so long as a case can be made for the contrary view.
5. The minutes of committee indicate that an initial vote to approve the application, in line with the officer recommendation, was unsuccessful. Following this, a motion to refuse the application, on the grounds set out in the reason for refusal, was made and that motion was carried. These minutes provide only a short summary of the deliberations, and they do not appear to be fully consistent with the version of events put forward by the applicant. I also note that the applicant's version of events does not appear to have been

¹ Applicant's comments to LPA Cost Claim Response (by email dated 28 February 2024)

fully contested by the Council. Notwithstanding this, I do not have a full transcript of the discussions between members and council officers and, as such, do not have a firm basis to confirm whether unreasonable behaviour has arisen in the Council reaching its decision.

6. Nonetheless, it would not be uncommon, during a committee, for members to seek advice from their professional officers on the proposals, or the wording and structure of a reason for refusal. Furthermore, it is clear from the representations received that there is genuine concern locally with regard to the impact that the development would have on the area, particularly the effects arising from an increased demand in on-street parking. This is a matter which forms one part of the overall effect of the development on the character of an area, as I have identified in my decision.
7. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. This, therefore, in turn leads to whether the reason for refusal itself stands to scrutiny and whether the Council have provided a case to support their decision.
8. While the manner in which the Council had reached its final decision at committee is unclear, I am satisfied that the Council's reason for refusal is clear and sufficiently robust to stand up to scrutiny. In this instance, I have found the appeal to be acceptable, however I am satisfied that the Council have provided sufficient evidence which substantiates their reason for refusal, having regard to the provisions of the Development Plan, and other material considerations including the SPD².
9. I find that the case for the Council was not so thin or otherwise unreasonable, that the only outcome for the appeal was for it to be allowed. Notwithstanding the manner in which the Council reached its final decision made, the decision itself does not appear to be unreasonable.
10. Regarding the informative relating to pre-application engagement, the Council have confirmed that this is a standard informative attached to their decision notices. They also confirm that members would not be involved in pre-application discussions. Officers and elected members both form part of the Council, and there is nothing before me to suggest that "the Council" would not engage in further pre-application discussions.
11. Finally, the Council's costs rebuttal makes comment regarding the cumulative effect of the extensions, resulting in an overdevelopment of the site. This does not form the basis of the Council's reason for refusal. The Council's case on which I have assessed the appeal, is clearly set out in the Statement of the Local Planning Authority within which such matters are not raised. There is nothing before me to suggest that this comment is therefore nothing other than an error and, in any event, I would not find that it has resulted in any wasted expense.

² Supplementary Planning Document: Residential Design Guidance (2016)

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

D Cleary

INSPECTOR