The Planning Inspectorate

Costs Decision

Site visit made on 12 June 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2024

Costs application in relation to Appeal Ref: APP/N5090/W/23/3334224
Colman Court, Christchurch Avenue, North Finchley, Barnet, London N12 0DT

- 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 Greyclyde Investments Ltd for a full award of costs against the Council of the London Borough of Barnet.
- The appeal was against the refusal to grant prior approval for the construction of one additional storey to provide 9 x residential units (class C3).

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 applicant asserts that during the consideration of a previous prior approval application[1] on the appeal site relating to 2 no. additional storeys of residential accommodation, the Council advised that one additional storey of accommodation would be acceptable on one of the buildings that fronts High Road. The submitted documentation shows that the Council advised of options including the withdrawal of that application and seeking approval for a proposal as they outlined, or for it to refuse that earlier application. The applicant withdrew the application and re-submitted a prior approval application for one additional storey (the appeal scheme), but on both buildings. The Council refused the appeal scheme for two reasons; (i) relating to its external appearance; and (ii) due to its ceiling height falling outside of the permitted development right. The applicant considers the appeal to be unnecessary and to have resulted in wasted expense due to the Council's unreasonable behaviour.

4. Reason for refusal (ii) was addressed with revised sectional drawings submitted with the appeal. However, it is accepted at the time of determination of the prior approval, the permitted development right in respect of the ceiling height of the proposal was not met, as such the Council was unable, in any event, to make a decision other than one of refusal. Therefore, an appeal could not have been avoided in this case.

[1] Application reference 22/3247/PNV).

5. Notwithstanding that the Council's advice related to only one of the buildings, it has said its earlier advice (referred to above) stated "please note that the comments are provisional and represent an informal view by an officer; the views contained within this email do not constitute an official determination, are not legally binding and do not bind the council to a particular course of action", and that the applicant should have sought pre-application advice for assurances regarding their scheme proposal (the appeal scheme).

6. The decision of the applicant to withdraw the earlier application was their choice to make, rather than pursuing it. Whilst there would be cost implications for the applicant following their decision to re-apply, the appeal scheme does differ to the advice provided by the council, with it relating to both buildings. Although, I do accept that pre-application advice could not in any case have provided complete assurance as it is not a formal decision of the Council, it would possibly have had a similar disclaimer to that stated above.

7. In my appeal decision, I have allowed the appeal and found that there would be no unacceptable harm to the external appearance of the building and the area. Nevertheless, the points raised by the Council in terms of the proposal's effect upon external appearance, which mainly relate to the proposed materials and the building on Christchurch Avenue, were arguable. The Council has provided sufficient information that satisfactorily explains why they formed that reason for refusal. Consequently, there has been no unreasonable behaviour by the Council during the appeal process that has resulted in wasteful expense associated with making the appeal.

8. As such, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

A Hunter

INSPECTOR