



Costs Decision

Site visit made on 4 September 2024

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2024

32A Totteridge Common, Whetstone, Barnet, London N20 8NE

Costs application in relation to Appeal Ref: APP/N5090/W/24/3339212

- 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 Ms Saroj Vekaria 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 'Erection of a new single storey dwelling with lower ground floor level following demolition of the existing outbuildings. Associated refuse/recycling and cycle storage'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant's claim is based on substantive grounds; namely, that the Council made inaccurate assertions about the proposal's impact, misinterpreting Green Belt policy in the National Planning Policy Framework (the Framework), and not determining similar cases in a consistent manner.
4. I understand that the appeal site was subject to a previously refused planning application¹ which was evidently similar to the application subject to appeal. An email sent to the Council was included in the applicant's costs submissions and details several apparent errors in the Council's determination of that application. It is alleged that while some of these were rectified in the assessment of the application subject to this appeal, several others were not.
5. One of these relates to the assessment of the appeal site in the context of the exceptions listed in paragraph 154 of the Framework. In the first planning application, the Council determined that the site was undeveloped and was therefore not subject to the exception given in paragraph 154(g) of the Framework. Be that as it may, it was clear in the officer report for refused planning application subject to this appeal that it had changed this perspective and treated the site as previously developed. The application turned on whether the proposal would have a greater impact on the openness of the Green Belt than the existing development.

¹ 22/396/FUL

6. The officer report explained that the concept of openness has both spatial and visual considerations as established through several legal judgements. The Council did not dispute the reduction in openness spatially through the removal of the extensive coverage of buildings on the appeal site. Conversely, it found that the proposed dwelling would have a greater impact visually than the existing buildings due to the site topography and views from the street to the south.
7. While it is clear from my decision that I disagree with this assessment, and I have allowed the appeal, the reason for refusal is clear in the decision notice with the relevant planning policies cited. Moreover, the Council has defended and substantiated its reasons at appeal stage. The concern relating to visual openness is clearly articulated, and although I understand the appellant's opposing views on this matter, it is clearly a matter of planning judgement.
8. The Council referenced the fact that no very special circumstances were forwarded by the appellant in support of their case. Given the Council's conclusion that the proposal would constitute inappropriate development in the Green Belt, it follows that these other considerations would be required to be weighed against the harm caused by this inappropriateness. As such, they were not erring in this approach, given their assessment at that stage.
9. Turning to the assessment of the Totteridge Conservation Area (TCA), the Council consulted their internal Conservation/Heritage Officer, who sets out the baseline character and appearance of the TCA and the impacts of the proposal in their view. Again, this was a matter of planning judgement, and while I also disagreed with their conclusion on that main issue, it was hardly 'perverse'.
10. The Council's case was supported by several other developments, including an appeal at Marsh Lane². It is not unusual to use such examples to substantiate a reason for refusal. I agree that consistency in decision making is important, although each case is ultimately assessed on its own merits. Examples of similar developments are material considerations and were treated as such, although none were ultimately determinative. The Council's use of this site, alongside their written evidence, was not unreasonable.
11. Ultimately, this refusal of planning permission was the result of a fundamental disagreement between the parties relating to matters of visual openness and impact on the TCA which could have only been resolved by way of an appeal.

Conclusion

12. Bringing things together, the Council did not act in an unreasonable manner. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been sufficiently demonstrated. Accordingly, I determine that the costs application should fail, and no award is made.

C McDonagh

INSPECTOR

² APP/N5090/W/16/3149254