



Costs Decision

Site visit made on 21 October 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2024

Costs application in relation to Appeal Ref: APP/N5090/W/24/3345688 138 High Road, London N2 9ED

- 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 Tony Forgione for a full award of costs against the Council of the London Borough of Barnet.
 - The application Ref is 23/4531/FUL.
 - The appeal was against the refusal of planning permission for a partial conversion of the existing building into 3no. self-contained flats including first and second floor rear extension. Associated refuse/recycling/cycle storage [AMENDED DESCRIPTION AND DRAWINGS].
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, 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 case for seeking an award of costs is centred on their concern that the Council failed to take into consideration other examples of approved flats nearby that do not have access to outdoor amenity space, that Committee members failed to take into account the advice of planning officers regarding the habitable status of the kitchen and that reasons for refusal were only clarified after Committee members had voted.
4. In the officer report that was presented to the Committee it details that neighbouring residential flats do not have access to outdoor amenity space. Committee members would therefore have been aware of this. The Council report clearly also substantiates the reason for refusal related to lack of outdoor amenity space, demonstrating that the garden space did not comply with the Barnet Supplementary Planning Document: Sustainable Design and Construction (2016) (SDC) and relevant development plan policies. Furthermore, the Council report refers to the examples cited by the appellant and notes that they were all determined before the adoption of the London Plan (2021), unlike this appeal. Thus, the other cases do not set a precedent by which the Council should have granted planning permission and I find it has not been demonstrated that the Council acted inconsistently or unreasonably in relation to this issue.

5. I note that Committee members came to a different conclusion to the planning officers regarding whether a kitchen is a habitable room. However, Committee members are not bound by the officer's recommendations and professional advice, providing this can be substantiated. The reason for refusal clearly references the policies of the Barnet Local Plan (2012) and the SDC which defines a kitchen as a habitable room where the total area is more than 13 square metres (including fittings). Whilst no substantive evidence has been submitted by either party in relation to the size of the kitchen, ultimately it is a matter of planning judgement. The Council's statement of case explains that the kitchen windows of No 136A and 136B would be close to the proposed rear extension, resulting in a loss of light and outlook. I find that these are reasonable concerns about the impact of the proposed development which justified their refusal and therefore unreasonable behaviour on this point has not been demonstrated.
6. The minutes of the committee meeting show that a motion was moved to refuse the application on various grounds, including character and appearance and loss of light and outlook for neighbouring occupiers, with the vote then following. This demonstrates that members knew on what grounds they were voting to refuse the application. I acknowledge this differs from the appellants' version of events, however without any evidence to the contrary I find that based on the evidence, unreasonable behaviour has not been demonstrated.

Conclusion

7. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the application for an award of costs is refused.

T Bennett

INSPECTOR