

Costs Decision

Site visit made on 29 March 2017

by David Walker MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22nd May 2017

Costs application in relation to Appeal Ref: APP/T5720/W/16/3165950 84 Mostyn Road, London SW19 3LP

- 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 Philip Greenhalgh for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the refusal of planning permission for demolition of existing garage and its replacement with a single storey and basement one bedroom house on land to the rear of 84 Mostyn Road.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. While there has been considerable dialogue between the parties there is little evidence of the Council's commitment to an additional dwelling at the appeal site. The notes appended to the appellant's statement are not binding, and pre-application offered by a Council is generally given without prejudice to its determination of an application. Moreover, matters relating to the principle of development do not form part of the reason for refusal.
 4. I have found environmental harm in the proposal notwithstanding whether or not the appeal site meets the definition of previously developed land. The lawful use of the land was not a matter before me for determination. In relation to noise, disturbance and privacy considerations, these were raised in the officer's report and addressed further in the Council's statement of case. They should not have come as a surprise.
 5. It is furthermore clear from the Council's reasoning that its privacy concerns related specifically to the overlooking of neighbouring gardens, rather than to houses. It will be apparent from my decision that I have agreed with its assessment despite points of accuracy in relation to proximity of the proposal. I acknowledge, however, that parking was raised as a contested issue in the Council's statement although not a part of the reason for refusal. It was not pursued with vigour.
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6. While I have some sympathy with the time taken to obtain a decision on the application the right of appeal against non-determination was not exercised and there is little evidence of any other procedurally unreasonable behaviour.
7. I find that the Council did not behave unreasonably and no award of costs is justified.

David Walker

INSPECTOR