



Costs Decision

Site visit made on 23 September 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2019

Costs application in relation to Appeal Ref: APP/T5720/D/19/3232847 40 Palestine Grove, London SW19 2QN

- 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 Ratiba Abed for a partial award of costs against the Council of the London Borough of Merton.
 - The appeal was against the refusal of planning permission for erection of a two storey side extension.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the 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. A partial award of costs is sought on the basis that the Council has acted unreasonably by failing to substantiate its reasons for refusal, specifically in regard to those set out in refusal reason 1 relating to the proposed development being unneighbourly and harmful to the host building and street scene.
4. The Council in defending the first reason for refusal states that the reasons are thorough, clear and fully referenced in the delegated report. However, I do not consider this to be the case. Both reasons for refusal lack clarity, with neighbour impacts mentioned in both reasons. In respect of the first refusal reason, there is reference to the proposed development as both unneighbourly and harmful to the street scene for numerous amalgamated reasons. Some of those, such as the effect on the *'appearance, scale and proportions of the host dwelling'* do not feature in the analysis within the delegated report, such that there was no justification provided for them by the Council when it refused planning permission. I also note the Council's confusing reference to harm to the street scene of *'Liberty Grove'*, yet it is apparent that it should have been a reference to Palestine Grove instead.
5. In determining the appeal I have concluded that the proposed development would not be harmful to the street scene, or be an unneighbourly form of development. Whilst I accept there is judgement involved, there was no reasonable evidenced basis for the Council's stance on these matters, which from the information before me, appears to have been based unduly on

assertions and a number of inaccuracies in the delegated report. For example, these include failing to account for the obscure glazing in both the existing side window of No 38 and the proposed rear bathroom window. There is also reference to the rear of the extension being gable-ended when in fact the proposal drawings indicate it would have a hipped roof.

6. I also note the applicant's points in relation to a previous appeal decision at 13 Palestine Grove, but without full details of the case I cannot be certain that it is directly comparable to this appeal. In any event, it is a well-established convention that decision-makers should consider each case on their own individual merits, and that is the approach I have taken in considering the planning appeal. In this respect, the Council did not behave unreasonably.
7. Nevertheless, due to the reasons stated, the first reason for refusal was not well founded, containing vague and inaccurate assertions, with the result that the Council has been unable to substantiate it as part of its appeal case. This amounts to unreasonable behaviour on the part of the Council, with the result that the applicant incurred unnecessary and wasted expense in responding to it as part of its appeal case.

Conclusion

8. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Merton shall pay to Ratiba Abed, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to all the matters within the Council's first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the London Borough of Merton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Adrian Caines

INSPECTOR