



Costs Decision

Site visit made on 28 October 2019

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Costs application in relation to Appeal Ref: APP/T5720/D/19/3232757 14 Highbury Road, Wimbledon Village, London SW19 7PR

- 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 & Mrs Gaj and Kathy Ragunathan 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 removal of contemporary garage extension at ground floor level together with new single storey rear extension, alteration to first floor balcony terrace and balustrade, second floor dormer windows to the rear, with basement beneath part of the garden.
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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 (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 PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is in persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
4. The previous appeal¹ at the site was set out in the report to the Council's Planning Committee (the report). A copy of the appeal decision was appended to the report. Paragraphs 7.2 to 7.4 of the report set out the relevance and significance of the appeal to the consideration of the application. The report states 'the Inspector concluded that the combined effect of the proposals would not be harmful to the host building or that of the surrounding area'. The officer concluded that the 'proposed extensions and alterations are considered to be acceptable in design terms and the proposal would preserve the character and appearance of the Merton (Wimbledon North) Conservation Area'.
5. Despite the officer advice, the Planning Committee refused planning permission on the basis that the proposal would result in a visually harmful impact on the

¹ APP/T5720/D/18/3209230

Wimbledon North Conservation Area. Whilst I accept that the impact on character and appearance can be a subjective matter and that the Planning Committee are entitled to form a different view to the Planning Officer, I find that in this instance, the Council have failed to give due regard to the Inspector's finding in relation to the impact of the previous, and similar, proposal in relation to character and appearance. I find that the differences between the previous and the current scheme are not so significant that a different conclusion to that of the Inspector could or should have been made.

6. I acknowledge that the Planning Committee had deeply felt concerns in relation to the proposal. Nevertheless, the professional advice the committee received, and the evidence before them, was overwhelmingly clear that an objection could not be sustained. This included evidence of other basement extensions. In spite of this, the committee still chose to refuse the application giving reasons that had been addressed in the previous Inspector's decision.
7. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the applicant has been faced with the unnecessary expense of lodging the appeal.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full 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 Mr & Mrs Gaj and Kathy Ragunathan the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council of 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.

A M Nilsson

INSPECTOR