
Costs Decisions

Site visit made on 20 January 2020

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th February 2020

Costs application in relation to Appeal Ref: APP/T5720/W/19/3237097 2 Dahlia Gardens, Mitcham CR4 1LA

- 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 M Arshad for a partial award of costs against the Council of the London Borough of Merton.
- The appeal was against the refusal of the Council to grant planning permission for the construction of an outbuilding.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order

Costs application in relation to Appeal Ref: APP/T5720/C/19/3237093 2 Dahlia Gardens, Mitcham CR4 1LA

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr M Arshad for a full award of costs against the Council of the London Borough of Merton.
- The appeal was against an enforcement notice alleging the erection of a single storey outbuilding to the rear of the land.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order

Reasons

1. The Planning Practice 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.

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2. This is made for a partial award arising from the Council's notification that it would only be defending the appeal on the first reason for refusal and not the second. The notification was received by the Planning Inspectorate on 5 December 2019, only four days (two working days) before the Appellant was required to submit any six-week statement he wished to make.
3. That very late notice that the Council would not be defending the second reason for refusal (given without any explanation) amounts to unreasonable behaviour. It clearly resulted in wasted expense for the Appellant in having to address that reason in his appeal submissions including his statement which had to be prepared and submitted by 9 December at the latest. The Appellant in fact submitted his statement on 4 December 2019, the day before the Council's notification.

4. The application for the award of partial costs in relation to that appeal is, therefore, justified. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

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5. The application is made for a full award arising from the Council's late withdrawal of the enforcement notice resulting in the appeal falling away.
6. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 requires an enforcement notice to specify why it is considered expedient to issue the notice and to specify all policies and proposals in the development plan which are relevant to the decision to issue the notice.
7. The notice did not do so. Rather, as the Council accepts, the reasons given describe why the Council did not consider the building to be intended for incidental purposes and so was not permitted development. It is, therefore, unsurprising that the Council found it necessary to withdraw it. It neither gave a reason why it was considered expedient to enforce (i.e. what harm was considered to arise) nor did it refer to any policies that it might have been contrary to.
8. Council's are expected to exercise their enforcement powers with due diligence. In this case the enforcement notice issued was defectively drafted and that amounts to unreasonable behaviour on the part of the Council. Furthermore, the notice was not withdrawn until 5 December, only four days (two working days) before the Appellant was required to submit any six-week statement he wished to make. That late withdrawal amounts to further unreasonable behaviour.
9. As with the planning appeal, the Appellant's statement was submitted on 4 December, the day before the notice was withdrawn. The withdrawal of the notice resulted in wasted expense for the Appellant in having to submit an appeal against it and the delay in withdrawing it continued wasted expense in the Appellant having to prepare and submit a statement before the 9 December deadline.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Formal Decisions

11. The applications for awards of costs are allowed in the terms set out below.

Costs Order in relation to Appeal Ref: APP/T5720/W/19/3237097

12. 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 M Arshad, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing reason for refusal no.2; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. 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.

Costs Order in relation to Appeal Ref: APP/T5720/C/19/3237093

14. 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 M Arshad, 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.
15. 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.

B M Campbell

Inspector