



Costs Decision

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2020

**Costs application in relation to Appeal Ref: APP/T5720/D/19/3242628
64 Henfield Road, London, SW19 3HH**

- 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 Ms Jing Xie for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class A, Paragraph A.4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the demolition of existing conservatory to build a 6 m single storey rear extension.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. 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.
3. The Council was clearly aware that the 42 day period in which to notify the appellant whether prior approval was given or refused in accordance with condition (10) (c) of paragraph A.4 of the Schedule 2, Part 1, Class A, Paragraph A.4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) expired on 16 September 2019.
4. Nevertheless, it issued a notice of refusal of prior approval for the proposed development dated 2 October 2019. Although the Council suggests that this may be considered an unfortunate error, issuing this decision when prior approval was already deemed to be granted amounts to unreasonable behaviour.
5. The receipt of a formal decision refusing prior approval understandably caused confusion and concern for the applicant. Although prior approval is deemed to have been granted and other courses of action were open to the applicant, she exercised her right to appeal against the Council's refusal to grant prior approval in order to resolve the situation created by the Council's unreasonable behaviour. I am therefore satisfied that the Council's unreasonable behaviour has directly caused the applicant to incur unnecessary or wasted expense in the appeal process.

Conclusion

6. I therefore conclude, for the reasons given above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in this appeal and that a full award of costs is justified.

Costs Order

7. 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 Ms Jing Xie the costs of the appeal proceedings described in the heading of this decision.
8. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Small

INSPECTOR