



Costs Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st July 2021

**Costs application in relation to Appeal Ref: APP/A5270/X/21/3266441
5 The Bye, Acton, London, W3 7PG**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Felix Akiga for a full award of costs against the Council of the London Borough of Ealing.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the erection of a rear outbuilding for use as a gym and home office/storage.
-

Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant's cost application is on the basis that the Council incorrectly calculated the relative size of the proposed outbuilding with the existing dwellinghouse as they failed to take into account the built extensions; but that they also made their assessment based on the footprint of the proposed outbuilding rather than the internal area. The applicant also submits that the Council cast aspersions on the Appellant's intentions in relation to the use of the outbuilding as a separate dwelling with no evidence, failed to participate fully in the appeal process or to provide a proper justification for its decision and failed to follow established precedent and caselaw.
4. The applicant agreed that the footprint area of the outbuilding would be around 41 sqm (as used by the Council) even if the proposed internal area would be around 35 sqm. The issue of whether the purpose is incidental to the enjoyment of a dwellinghouse is a matter of planning judgement as confirmed by caselaw, and the internal layout and proposed use of the outbuilding has changed since the original application in that the home office/storage use has been added. The Council did not behave unreasonably in making their decision based on the information that they had, notwithstanding that my decision was that it was not well-founded and the certificate of lawful development should be granted. The Council is not obliged to submit addition evidence during the

appeal and can rely on its decision notice if it so wishes. It is not strictly bound by other appeal decisions which will also have been determined depending on their specific facts.

5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Zoë Franks

INSPECTOR