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## Costs Decision

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 July 2021

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### **Costs application in relation to Appeal ref: APP/Q0505/X/21/3267012 59 Darwin Drive, Cambridge, CB4 3HQ**

- 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 Mr A Powell for a full award of costs against Cambridge City Council.
  - The application is made pursuant to an appeal against the refusal of the Council to issue a certificate of lawful use or development for an existing use described as 'separate one bed dwelling to rear of 59 Darwin Drive'.
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### **Decision**

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

### **Preliminary Matters**

2. The costs application was submitted in writing and is thus a matter of record. The Council was given an opportunity to respond to the application but did not do so.
3. The Planning Practice Guidance (PPG) provides that where a party to a planning proceeding has behaved unreasonably and, in so doing, directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs<sup>1</sup>.

### **Reasons**

4. The Council submitted their report on the application plus a statement in order to justify their decision on the LDC application and contest the appeal. The report and statement include analysis of the appellant's evidence and Council records, and so the Council did substantiate their reason for refusing the application. The appellant may not like the Council's reasoning but that does not make it vague, generalised or inaccurate. The appellant has not said which of the Council's assertions should be so described.
5. The Council referred in their report and statement to aerial photographs, the 2011 planning application, HMO licences and Council Tax and electoral records. Thus, the Council did provide evidence to contradict the appellant's version of events – but it would not have mattered if they had not done so. As I explained in the appeal decision letter, the onus of proof was on the appellant. He has not explained why the Council's evidence (or lack of it) should have led to an LDC being granted.
6. My reasoning on the appeal was not identical to that of the Council on the application. Nonetheless, like the Council, I found that the appellant failed to show that the use of the outbuilding as a dwellinghouse is immune from enforcement action on the balance of probabilities. The outcome of a costs application need not

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<sup>1</sup> PPG paragraph ref ID: 16-028-20140306

follow that of the appeal it is linked to, but in this case I could not sensibly find that the Council unreasonably refused the application.

7. I can understand the appellant's frustration that it took the Council two years to determine the application. During that time, however, the appellant submitted additional evidence and held two meetings with Council officers. It seems that at least part of the reason why the decision delayed was that Council gave the appellant opportunities to make a better case.
8. But even if the Council did unreasonably fail to determine the LDC application<sup>2</sup>, the appellant did not incur any wasted expense. It would always have been necessary for him to make an appeal because, given the insufficiency of his evidence, the Council would always have refused the application.
9. With regard to all other matters raised, I conclude that the Council did not behave unreasonably so as to cause the appellant to incur wasted expense as described in the PPG. The application for an award of costs is refused.

*Jean Russell*

INSPECTOR

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<sup>2</sup> Contrary to PPG paragraph ref ID: 16-049-20140306