



Costs Decision

Site visit made on 18 May 2021

Decision by Scott Britnell MSc FdA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2021

Costs application in relation to Appeal Ref: APP/T5720/W/20/3262670 Oriol House, 26 The Grange, Wimbledon, London SW19 4PS

- 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 Stephen Rayment 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 'provision of basement together with re-modelling of single storey rear extension (as granted planning permission 20/P0627) and alteration to front boundary wall at the above property 26 The Grange, Wimbledon SW19 4PS.'
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Decision

1. The application for a full award of costs is refused. A partial award of costs is made in the terms set out below.

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 applicant suggests that the Council exhibited unreasonable behaviour in the following ways: It did not have regard to pre-application advice, it failed to take into consideration the relevant documents submitted with the application and it failed to provide a copy of all representations that it received despite repeated requests prior to the determination of the appeal.
4. I am advised that the applicant paid the Council for pre-application advice on two separate occasions and I have been furnished with a copy of two receipts from the Council to evidence this. The applicant suggests that the Council failed to take account of this advice in their assessment of the planning application, subject to the substantive appeal. The Council, in their rebuttal to this costs application refer only to the second pre-application advice request. It is, however, reasonable to consider that the Council would have had access to the records of any pre-application advice regarding the appeal site; particularly if, as in this case, that advice was fairly recent.
5. Nevertheless, the Planning Policy Guidance¹ states that pre-application advice provided by the local planning authority cannot pre-empt the democratic decision making process or a particular outcome, in the event that a formal

¹ Paragraph: 011 Reference ID:20-011-20140306

- planning application is made. Consequently, this matter does not demonstrate unreasonable behaviour resulting in unnecessary wasted expense.
6. The Council accepts that the Flood Risk Officer had not reviewed the proposed SuDS Scheme when assessing the application. I consider that the failure of the Council to properly consider all of the information with which it was provided, and which then led to a refusal reason, demonstrates unreasonable behaviour.
 7. The above was compounded by the Council failing to provide a copy of all of the external and internal consultation responses to the applicant when requested, prior to the determination of the application. Had this occurred, the applicant could have directed the Council to the presence of the SuDS Scheme. I acknowledge that the application was considered during the Covid pandemic and that this is likely to have led to high levels of e-mail communications and requests from customers. However, the failure to provide this information compounded the Council's initial omission.
 8. In reaching this conclusion, I am mindful that the Council may have not considered the SuDS scheme to be acceptable. However, the appellant has had to prepare his appeal case on the basis that the Council had not considered the SuDS scheme at all. This is likely to have resulted in costs that could otherwise have been avoided.
 9. The Council also suggests that the time to negotiate on plans is at pre-application stage. However, such an approach does not, in my view, adequately account for the failure of the Council to consider the information that was before it as part of the application submission.
 10. The applicant also suggests that the Council did not assess Plan P14. However, the Council confirm that they did consider this plan and in the absence of compelling evidence to the contrary, I accept that they did. The applicant also considers that the Council has failed to adequately explain how the figures in the Officer's Report were reached. However, although a percentage figure has not been provided, the Officer's Report sets out clearly how they have assessed the proposal with reference to the area that the basement would cover. I do not consider that this is unreasonable behaviour.
 11. The applicant also suggests that it is not clear that the Council's Conservation Officer considered the Basement Impact Assessment when considering the application. It must be assumed, unless it is otherwise proven, such as in the case of the SuDS scheme, that Council officers would have considered all of the information before them.
 12. The applicant states that the first reason for refusal indicates that the basement would harm the locally listed building and the conservation area, but that the Officer's report states that the visible elements of the basement would be acceptable to the character of the site and the conservation area. The officer report sets out how the Council has assessed the proposal and why it considers that it would result in harm to the locally listed building and the conservation area. It is clear that the Council did not consider all of the elements associated with the basement, such as the lightwells and stairs, to be harmful. I do not consider the Council's approach in this matter to constitute unreasonable behaviour.

13. In light of the above, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and thus a partial award of costs is justified.

Costs Order

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 Stephen Rayment, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with matters relating to the SuDS Scheme as referred to by the third refusal reason; 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 an agreement as to the amount.

Scott Britnell

INSPECTOR