
Costs Decision

Site visit made on 9 September 2021

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2021

Costs application in relation to Appeal Ref: APP/T5720/W/21/3270169 2 Orchard Close, Raynes Park, London SW20 9HU

- 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 Andre Fagan for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application described as "Existing self contained 1 bedroom apartment (granny annex) extended to comply with national house space standards, existing house first floor extension separated from original dwelling to form self contained 3 bedroom duplex apartment at first floor and loft space".
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The costs claim relates to the planning application process and in particular to an undue length of time to register the application, additional time and work in responding to the Council, the failure to issue a decision within the statutory period and delays in delivering the project.
4. There was a delay of about a month between submission of the application and a reply from the Council on matters arising. Such a delay is regrettable, but I note the Council did issue an apology for this. Not all planning applications are complete when submitted. In this instance two queries appear to have been raised. The first related to a misunderstanding on inclusion of side elevations due to the title given to plan PP04. The second concerned a substantive issue on whether the proposal was for one additional unit with an annex retained or for two additional units. This is a matter that should be made clear in the description of the development to provide certainty for the consequent fee for the planning application. Whilst the floor plan on page 13 of the Design and Access Statement showed an internal door connecting with the annex retained, the provision of a dedicated garden for the annex coupled with its own front door indicates that the annex could readily become a separate unit if the connecting door were to be closed up. It was reasonable for the Council to have queried this matter before registration of the application; this did not result in excessive additional time and work in responding to the Council.

5. Councils are set targets to determine as many such Minor applications as reasonably possible within a statutory 8 week period and their performance on this can be measured. Some applications take longer to process than others due to their complexity and the need to wait for consultation replies. Some therefore can take longer than 8 weeks to determine. The appellant's choice to submit an appeal against non-determination soon after the 8 week period expired does not necessarily mean that the Council had acted unreasonably in not determining the application. The Council has also referred to a change of case officer and a Covid-19 lockdown during this period that would have constrained its resources and ability to respond to the application.
6. It will be evident from the main decision that I consider there to be harm in relation to the impact of the scale and details of the proposal on the character and appearance of the area and conflict with adopted planning policies. The Council's appeal statement indicates that it would have refused planning permission on these grounds had it been able to take a decision on the application. The Council therefore has not prevented or delayed development which should clearly have been permitted.
7. The evidence before me indicates that the Council's communication with the applicant during the application process could have been more thorough and timelier. Nonetheless, the Council has made its position clear and in a timely way during the appeal process.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Rory MacLeod

INSPECTOR