
Costs Decisions

Site visit made on 12 October 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021

Costs application in relation to Appeal A Ref: APP/D5120/C/19/3240310 14 White Oak Gardens, Sidcup, Kent DA15 8WF

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Martyn for a partial award of costs against the Council of the London Borough of Bexley.
 - The appeal was against an enforcement notice alleging the siting of a storage container.
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Costs application in relation to Appeal B Ref: APP/D5120/W/19/3240306 14 White Oak Gardens, Sidcup DA15 8WF

- 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 A Martyn for a partial award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal of planning permission for "retention of single storey detached wooden clad storage container".
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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. This is a procedural application for an award of costs, relating to the process in issuing the enforcement notice subject of Appeal A, and a substantive application relating to the merits of the appeals.
3. Section 172 of the Town and Country Planning Act 1990 (the Act) states that the Council may issue a notice where it appears to them that it is expedient for them to do so. Whether it is expedient to issue a notice does not fall within the statutory grounds of appeal at Section 174(2) of the Act. Any challenge to the enforcement notice reflecting the expediency of taking enforcement action would need to be made to the courts, not through an appeal against the enforcement notice set out at Section 174 of the Act.
4. Consequently, whether and when it is expedient to take enforcement action is a matter for the Council. It is not unreasonable to take enforcement action where there is a breach of planning control, even where there is an extant right to appeal against a refusal of planning permission. In this case, the appeals

against that refusal of planning permission and the enforcement notice were able to be linked.

5. I note that the site was subject of a previous planning application relating to a garage in the front garden that was refused and dismissed at appeal. It is not unreasonable for the Council to have taken that into account in determining the subsequent planning application and as part of their considerations as to whether it was expedient to issue the enforcement notice. The weight to be given to that decision is a matter for the decision maker, in this case the Council.
6. The Officer Report relating to the issue of the enforcement notice describes the timber clad storage container and assesses its effect on the character of the street scene. Consequently, the way the Council approached their decision to take enforcement action was not unreasonable.
7. Whilst I have concluded that, on balance, planning permission should be granted for the development subject of the planning application and enforcement notice, it was not unreasonable of the Council to take an alternative view.
8. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs must fail.

AJ Steen

INSPECTOR