
Costs Decision

Site visit made on 30 January 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Costs application in relation to Appeal Refs: APP/C5690/C/21/3289570 and APP/C5690/C/21/3289571

108 Durham Hill, Bromley BR1 5ND

- 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 Sandra Stephenson for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against an enforcement notice alleging the erection of a single storey rear extension and portacabin to the front curtilage without planning permission.
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Decision

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

Background

2. The Planning Practice Guidance (the 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 considers that the Council has misapplied its policies and it has not given due consideration to her and her family's racial characteristics in reaching its decision to issue the notice. The appellant also considered the Council should have considered the portacabin to constitute a caravan which did not require planning permission and that it should have allowed the retention of the extension on the basis that local residents and the local Councillor had no objections to it.
4. The applicant's claim for costs is on the basis that the Council should not have issued the enforcement notice or that it should have withdrawn the notice after it had been served.

Reasons

5. As part of its reasons for serving the notice, the Council refers to the combination of the portacabin, the rear extension and the outbuilding, which is the shed, as covering 70% of the total curtilage area. In my decision I note that the reference to total curtilage area is at odds with the guidance in the Lewisham local plan Alterations and Extensions Supplementary planning document (2019) (the Extensions and Alterations SPD).

6. However, the relevant planning policies do not refer to a specific proportion or percentage of retained garden or curtilage space, and instead require development to be of a high quality. In that respect the guidance in the Extensions and Alterations SPD is helpful in the assessment of what could be regarded as a poor quality outcome in terms of overdevelopment. The Council's reference to a percentage of the total curtilage is, therefore, relevant and not a misapplication of its policies in this context.
7. The applicants are critical of the Council's reference to Human Rights and the Public Sector Equality Duty (PSED) in its Planning Enforcement Report which they regard as a 'standard paragraph'. Nevertheless, whilst the Council does not refer to the particular characteristics of the applicants, this reference is sufficient to demonstrate that it has had regard to Human Rights and its duty under the PSED.
8. The applicants consider that had the Council correctly, in their opinion, identified the portacabin as constituting a caravan, it would have reached the view that planning permission was not required for it. This is the basis for their appeal under ground (c). It will be seen from my decision that I do not consider that the portacabin amounts to a caravan and that its installation was not permitted development by virtue of Schedule 2, Part 5, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
9. In its Appeal Statement the Council references its Planning Enforcement Report in terms of providing a response to the applicants' appeals under ground (c). There is no reference to a caravan in the Council's report and to that extent the Council has not addressed this ground of appeal. However, the burden of proof under ground (c) lies with the appellants and the Council is entitled to think that the portacabin is not a caravan.
10. The views of local people, including Councillors, are an important consideration in the planning process but they are not determinative. This is the case in respect of both the determination of planning applications and the prior approval process under Schedule 2, Part 1, Class A of the Town & Country Planning (General Permitted Development) Order 2015 (GDPO Part 1, Class A).
11. For the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Sarah Dyer

Inspector