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## Costs Decision

Site visit made on 4 April 2024

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 April 2024**

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### **Costs application in relation to Appeal Ref: APP/T5720/W/23/3326725 Land adjacent to 72A Havelock Road, London SW19 8HD**

- 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 Ghlen Perry Capuyan for a full award of costs against the Council of the London Borough of Merton.
  - The appeal was against the grant subject to conditions of planning permission for planning consent to construct a 1-bed detached residential property.
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### **Decision**

1. The application for an award of costs is partially allowed in the terms set out below.

### **Reasons**

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 appeal relates to the removal of permitted development rights in respect of Classes A-H of Schedule 2, Part 1 of the GPDO<sup>1</sup> as well as openings at 1st floor level. In respect of the claim for costs, the appellant contends that the disputed conditions are based on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Also, that the Council has imposed conditions that are not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus do not comply with the Guidance and the National Planning Policy Framework. The Costs application has been passed to the Council, but it has not provided a response.
4. In my Appeal Decision, I have concluded that the removal of Class B permitted development rights relating to the enlargement of the dwellinghouse consisting of an addition or alteration to its roof is reasonable and that the Council has justified its concerns on that particular matter. The Council's Reason for this condition reflects my conclusions. I therefore cannot conclude that the Council has behaved unreasonably in relation to Class B.
5. I have also concluded that the removal of permitted development rights in respect of Classes A, E and F is reasonable and necessary. However, my

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<sup>1</sup> Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

consideration of this, including with regards to the Council's Statement, does not reflect the Reasons given by the Council in respect of this Condition. Whilst this may be an oversight of the Council in setting out its Reason, this represents unreasonable behaviour and the appellant has been put to the unreasonable expense of submitting an appeal so that valid Reasons for these aspects of Condition 4 can be determined.

6. I have concluded that the removal of permitted development rights in respect of Classes C, D, G and H would not meet the tests of reasonableness and necessity. Indeed, the Council accepts that its decision in respect of Class C was excessive. As is reflected in my Appeal Decision, the Council has not provided a clear justification for the restriction of national permitted development rights on these matters. This represents unreasonable behaviour on behalf of the Council and the appellant has been put to unnecessary expense in submitting an appeal in order to address this.
7. Condition 5 relating to openings at 1st floor level is also not reasonable or necessary. The Council has not defended this condition in its Statement. Condition 5 is not supported by an objective analysis of the Reason for that condition, and the Council has therefore behaved unreasonably in imposing this condition to the effect that the appellant has been put to unreasonable expense in progressing the appeal.
8. Drawing the above together, I consider that an award of costs is justified, with the exception of addressing Class B of the GPDO.

### **Costs Order**

9. 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 Ghlen Perry Capuyan, the costs of the appeal proceedings described in the heading of this decision, except for the costs incurred in respect of addressing Class B of the GPDO; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. 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 agreement as to the amount.

*David Cross*

INSPECTOR