



Costs Decision

Site visit made on 31 March 2025

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Costs application in relation to Appeal Ref: APP/T5720/D/24/3353208

65 Homefield Gardens, Mitcham, Merton CR4 3BZ

- 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 Amrik Sandhu for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the refusal of the Council to grant planning permission for erection of an outbuilding in the rear garden with use ancillary to the main dwelling.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the 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.
3. The applicant considers that although not cited as a reason for refusal, the Council refused the planning application because the applicant would not enter into a legal Section 106 agreement to secure the use of the proposed outbuilding as ancillary accommodation to the main dwelling at 65 Homefield Gardens in perpetuity. The applicant highlighted similar consents for outbuildings where planning conditions had been used for the same purpose.
4. The PPG sets out that local authorities are at risk of an award of costs if they require that the applicant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework) on planning conditions and obligations, or that permission is refused on a planning ground capable of being dealt with by conditions.
5. I have found that the use of the proposed outbuilding could be secured as ancillary accommodation by the mechanism of a planning condition. The requirement for a planning obligation was therefore not necessary to make the development acceptable in planning terms.
6. Notwithstanding the above, a planning obligation to address such matters would not, of itself fail to accord with the law or relevant national policy in the Framework. It is the individual site-specific circumstances of the case along with an element of planning judgment as to whether an obligation would be required rather than a planning condition. Likewise, whether an outbuilding would be ancillary to the main dwelling is a matter of fact and degree. The proposed outbuilding has a relatively

large footprint, and the Council have highlighted that there is an issue within the borough of outbuildings in self-contained residential use. I therefore appreciate the Council's concern that the development could be used for uses other than those ancillary to the main dwelling, and result in an intensification of use that would harm the living conditions of neighbouring occupiers and harm the free flow of traffic in the locality.

7. The Council considered that a planning condition would not be sufficient in this instance as any unlawful use of the outbuilding as a separate accommodation could potentially be made lawful through the passage of time, whilst the use of s106 legal agreement would safeguard the use in perpetuity. In my appeal decision, I considered that its use as ancillary accommodation could be reasonably controlled by a condition. However, this is a matter of judgement, and whilst I may disagree, I conclude that the Council were not unreasonable in their consideration that a planning obligation would be an appropriate mechanism to secure the outbuilding's use as ancillary to the main dwelling.
8. Moreover, the lack of a signed Section 106 agreement did not form a reason for refusal. The Council considered that the proposal would fail to respect the proportions of the original dwellinghouse and the locality. It is not certain that a legal agreement or a condition to control future use of the building would have addressed the Council's concerns fully such that it would have resulted in a successful outcome, or would have changed the need for the applicant to submit an appeal.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The application for an award of costs is therefore refused.

L C Hughes

INSPECTOR