



The Planning Inspectorate

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Your Ref: EN11/0908
Our Ref: APP/X5210/C/12/2180244
Date: 30 October 2012

Dear Madam

Local Government Act 1972 - Section 250(5)
Town and Country Planning Act 1990 – Sections 174 and 322
Appeal by Mr B Dargan
Site at 16 Holly Walk, London, NW3 6RA
Application for Costs

I refer to the above and enclose a copy of the Inspectorate's letter giving the decision of the Secretary of State on Mr B Dargan's application for an award of costs.

You will see that the application for costs fails and therefore an award of costs is not justified.

Yours faithfully

Sarah Williams

Sarah Williams
Costs and Decisions Team



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Your Ref:

Our Ref: APP/X5210/C/12/2180244

Date: 30 October 2012

Dear Madam

**LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN & COUNTRY PLANNING ACT 1990 – SECTIONS 174 & 322
LAND AT 16 HOLLY WALK, LONDON: APPEAL BY MR B DARGAN: APPLICATION
FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspectorate's letter of 26 July 2012. This confirmed withdrawal of the enforcement notice issued by the London Borough of Camden. The notice alleged a breach of planning control namely;

"Without planning permission: The unauthorised erection of the new front boundary wall including the increase in overall height and addition of black trellis fence" on land described above.

2. This letter deals with your application, on behalf of the appellant, for an award of costs against the Council. It was made in your correspondence of 29 August and 26 September 2012. The Council replied in correspondence of 19 September 2012. As these representations have been fully disclosed to the parties, it is not proposed to summarise them in detail. They have been carefully considered.

Summary of decision

3. The formal decision is set out in paragraph 10 below. The application fails and no award of costs is being made.

Basis for dealing with the costs application

4. In enforcement appeals, the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are only awarded on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

5. Published policy guidance is in CLG Circular 3/09 (referred to below as the "Costs Circular"). The application for costs has been considered with reference to this guidance, the appeal papers, the costs correspondence and all the relevant circumstances.

Reasons for the decision

6. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably by issuing and subsequently withdrawing the enforcement notice when they did, causing the appellant to incur wasted or unnecessary expense in the appeal process. Paragraphs A24 and B32 to B42 of the Costs Circular are particularly relevant.

Conclusions

7. Paragraph A24 of the costs Circular explains that an applicant for costs will need to demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and decisions will be taken on the balance of probability. Expense should be identifiable or capable of being quantified in some tangible way. Expense may be unnecessary or wasted because the entire appeal could have been avoided or because time and effort was expended on one part of a case that subsequently turned out to have been abortive.

8. It is noted that the Council contend that they notified the appellant on 11 July 2012 that the enforcement notice had been withdrawn and a revised notice issued. They enclosed a copy of the notification addressed to the owner at the appeal address with their response to the costs application. The Council suggest that the appellant must have failed to notify you of the withdrawal. It is considered significant that you have not refuted the Council's assertions. Therefore, on the evidence available, the Secretary of state can only conclude that as the notice was withdrawn on 11 July 2012, the appeal submitted on 23 July 2012 was not necessary and it follows that any wasted expense incurred by the appellant in doing so was self inflicted. Consequently, although it is evident that the entire appeal could have been avoided, this was as a result of the appellant's own actions rather than that of the Council's.

9. The overall conclusion reached therefore is that although the appellant has incurred wasted expense in submitting an unnecessary appeal, the Secretary of State is not satisfied that it was caused by any unreasonable behaviour on behalf of the Council as they withdrew the notice before the appeal was submitted.

FORMAL DECISION

10. For the reasons given above, the Secretary of State for Communities and Local Government has decided that no award of costs against the Council, on grounds of "unreasonable" behaviour resulting in "wasted" or "unnecessary" expense is justified in the particular circumstances. The application is therefore refused.

11. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

12. A copy of this letter has been sent to Deirdre Traynor, Planning Officer at the London Borough of Camden.

Yours faithfully



KEN McENTEE

Authorised by the Secretary of State
to sign in that behalf

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 - section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Senior Courts Costs Office²
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 020 7947 7124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court³. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL.

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm
You can also buy the Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

² Formerly named the Supreme Court Costs Office

³ Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.

