



Costs Decision

Site visit made on 6 July 2021

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 August 2021.

Costs application in relation to Appeal Ref: APP/L5240/D/21/3270907 235 Selhurst Road, South Norwood, London SE25 6XP

- 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 & Mrs Tawfik for a full award of costs against the London Borough of Croydon.
 - The appeal was against the refusal of planning permission for the formation of a standard vehicular crossover (dropped kerb) to access driveway of an existing single dwelling house and associated external works involving the rebuilding of front garden wall with new metal gates and railings and new paving to driveway.
-

Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 PPG makes clear that a local planning authority can be at risk of an award of costs which can be either procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
4. In this particular appeal, the applicant has concerns on two grounds, the first being the process that the council followed in order to make a recommendation; and secondly, that the refusal was based upon vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. In terms of the procedural ground, the applicant states that the Council took over 14 months to reach a determination, where the Council continually 'moved the goalposts' and refused to provide proper explanations for why it objected to the scheme. A number of emails have been submitted as part of the appeal which show the discussion between the Planning Officer and the applicant with regards to the issues, which predominantly revolve around the Transport Officer's opinion of the scheme.
6. Based on the information before me, it would appear that some of the delay in determination was caused by the need for the applicant to submit swept path analysis plans, and when these were submitted, they contained a number of errors which the Council duly commented upon. This led to further plans being

submitted which did demonstrate that access in accordance with the Council's Vehicular Crossover Guidelines (VCG) was achievable. It also did appear that the Council did try and work with the applicant in developing a solution, however it appeared that the main concerns were coming from the Council's highway team rather than the planning team who did respond to emails and seek to work with the applicant to give further advice.

7. Whilst I believe the decision could have been dealt with more swiftly; and also considering the current pandemic, I do not feel that the Council acted unreasonably in terms of the procedural ground which unfortunately was very prolonged and caused frustration and distress to the applicant. Some of the delayed time could not have been avoided and in this respect, I do not feel that the Council acted unreasonably.
8. On the second ground the applicant was left feeling that there was a lack of proper explanation and a lack of understanding for the reason for refusal based on the evidence which was submitted in the planning application. The submitted Vehicle Swept Path Analysis demonstrated compliance with the Council's guidance; however was still turned down. To me it appeared that the guidance was treated more like adopted planning policy and that there was a failure to treat each application on its individual merits as per the guidance. In this case, there was already an existing access, and would likely continue being utilised as an access despite the outcome of the appeal. The proposal clearly did not cause severe impacts to the highway network, and in my opinion, the decision hinged on minute details of whether a car would always be central to the access, an issue which was mitigated by the placement of the dropped kerb. In this case, the Highway Officer's resistance to the scheme did not have an adequate basis to substantiate the refusal of the application. As such, the appeal was avoidable and has therefore resulted in unnecessary and wasted expense to the applicant in defending this appeal.
9. As such, I consider that unreasonable behaviour in line with the PPG has been demonstrated in relation to solely the defending of this appeal and a partial award of costs in defending this component of the appeal is warranted.

Costs Order

10. 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 London Borough of Croydon shall pay to Mr & Mrs Tawfik, the costs of defending the appeal proceedings as described in the heading of this decision; such costs to be assessed in the Senior Courts Cost Office if not agreed.
11. The applicant is now invited to submit to the London Borough of Croydon, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Somers

INSPECTOR