



Costs Decision

Hearing (Virtual) held on 12 July 2022

Site visit made on 23 September 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Costs application in relation to Appeal Ref: APP/L5240/W/22/3297517 39 Heathfield Road, Croydon CR0 1EZ

- 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 R Kasmani (Winstable Ltd) for a full award of costs against the Council of the London Borough of Croydon.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for change of use from Use Class E(e) (previously D1) provision of medical or health services to provide a House of Multiple Occupation (HMO) (Use Class Sui Generis) comprising 15 bedrooms with shared kitchen facilities, alterations, construction/enlargement of basement area including external stairs/fenestration, a dormer extension on both side roof slopes, erection of two/three storey side/rear extension incorporating balconies as rear, alterations including changes to fenestration, designated refuse/recycling, cycle stores and parking space.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications or unreasonably defending appeals.
4. The PPG further makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. The appellant's claim, in short, is that the Council failed to respond to the appellant during the course of the application and was unable to advise when the application would be determined, leaving the appellant with no choice but to appeal. The Council's failure to determine the application has resulted in the appellant incurring unnecessary costs in the preparation of the appeal, while

the building remains unable to be used to deliver new homes and requiring constant security to prevent vandalism and squatting.

6. The Council in response states that the matters raised by the appellant do not relate to the appeal stage, and while they may be aggrieved by the failure to obtain planning permission, it is their responsibility to maintain the building. In terms of communication, the Council points to its perilous financial state in late 2020 which resulted in services being pared back significantly. This, the Council states, led to planning officers focussing only on statutory functions and not entering into correspondence. Staff shortages at this time compounded matters.
7. The Council concedes that, at present, it is unable to determine applications within the statutory period, but it points to the appellant's right to appeal once the determination period expires. It adds that delays were outside of the appeal process and that it offered to discuss the proposal through its pre-application service, but this was not taken up by the appellant. Lastly, given the position it set out at appeal, the Council indicates that had a decision been made, the application would have been refused and the expense of making the appeal would have occurred in any event.
8. The matters raised surrounding the communication and general conduct of the Council during the application process are unfortunate. Ultimately, however, the Council's handling of the application is a matter for local government accountability outside of the appeal process. In terms of whether these actions were unreasonable in the context of the appeal, there is some evidence from the appellant of correspondence going unanswered by the Council. Irrespective of the Council's circumstances, the lack of communication, particularly after the statutory deadline expired, was unreasonable and left the appellant with no choice but to appeal.
9. However, for costs to be awarded, it must be demonstrated that the Council has behaved unreasonably in relation to procedural or substantive matters at the appeal stage. I have no firm evidence that the Council has not adhered to the procedural aspects of the appeal. Moreover, on the evidence of the Council's objections to the proposal, it is likely that had a decision been made, it would have been a refusal and would have led to an appeal in any event. Given the outcome of the appeal, the Council has justified its eventual position in relation to the proposal and its actions did not ultimately prevent or delay development which should have been permitted. On that basis, the Council's behaviour did not involve the applicant in unnecessary or wasted expense in making the appeal.

Conclusion

10. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Having regard to all matters raised, an award of costs is not justified, and no award is made.

K. Savage

INSPECTOR