



Costs Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

**Costs application in relation to Appeal Ref: APP/L5240/X/21/3275412
1A St Dunstan's Road, South Norwood, London SE25 6EU**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr William Lawrence for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development (LDC) for light industrial use (Use Class E – Commercial, Business and Service).
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Decision

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

Reasons

2. The Planning Practice 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 LDC application form is dated 26 February 2021, although the appeal form says that the LDC application was made on 22 March 2021.
4. On 12 May 2021, near the end of the prescribed period, the Council had requested additional evidence from the applicant which it said should be received by 19 May 2021. While the Council says it cannot find a record of a response from the applicant, I have seen a copy of what appears to be an email from the applicant's agent in response to the Council's email of 12 May 2021 with additional evidence attached, dated 18 May 2021. On the balance of probabilities, I accept this evidence at face value and find that the necessary evidence to positively determine the application was provided in accordance with the Council's request and timetable. It was unreasonable for the Council not to have determined the application on receipt of the evidence - which it appears to have accepted as persuasive during the subsequent appeal process, to the extent that the appeal was not contested.
5. The Council further says that it was waiting for a pending appeal decision¹, since it would be a material consideration in the determination of the LDC. However, I give that argument very limited weight since - as the Inspector makes clear in his decision - in light of a sworn affidavit produced by the appellant (and reproduced in the appeal before me) the Council was not disputing that the use of the appeal site was for light industry. Rather, the main issue in the appeal was whether the proposed change of use would

¹ APP/L5240/W/20/3251282 "Change of use from light industry (Use Class B1c) to 4 x dwellinghouses (Use Class C3)"

adversely affect the sustainability of the industrial, storage or distribution services provided in the area. Therefore it is difficult to understand why the Council might think it necessary to desist in determining a LDC application which simply sought to confirm (the apparently undisputed) lawful use of the appeal site for light industry.

6. The above unreasonable behaviour resulted in the applicant being put to the unnecessary expense of having to make an appeal in order to obtain a LDC which should have been issued by the Council upon receipt of all evidence provided by the applicant up to and including 18 May 2021.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Croydon shall pay to Mr William Lawrence the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the Council of the London Borough of Croydon to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR