The Planning Inspectorate

Costs Decision

Site visit made on 3 May 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Costs application in relation to Appeal Ref: APP/L5240/W/22/3303160
Land between 39 and 63 Kenley Lane, Kenley, Surrey CR8 5ED

- 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 O Lazar for a full award of costs against the Council of the London Borough of Croydon.
- The appeal was against the refusal of planning permission for the erection of stable block adjacent to northern boundary, and installation of post and wire fencing on all boundaries (including along the Kenley Road frontage) to include farm gate within the northern boundary.

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. This application for a full award of costs is based on the procedural matters of the time taken by the Council to make a decision on the planning application and a failure to engage constructively during the process. There are also substantive grounds advanced in favour of the claim, namely that the Council's reasons for refusal were unfounded.

Procedural Grounds

4. The Council took over a year to determine the planning application. They explain that part of this was due to the original case officer leaving but there is no further detail as to how assigning a new case officer in itself led to such a long delay. I do however note from the Council's emails that their ways of working may have been disrupted as a result of the Covid pandemic and this could have been a contributory factor to the delay.

5. Despite the length of time, there was email dialogue between the agent and case officers. It was also explained in correspondence from the Team Leader to the agent that some of the delay was due to the lack of consultee response and that there would be some active chasing of responses. I also note that the second case officer sought to instigate a site visit, which appeared to involve both the agent and applicant.

6. Whilst the applicant was contemplating an appeal against non-determination some 6 months after the submission of the application, an extension of time

had nonetheless been granted to the Council. The subsequent appeal, a further 6 or so months later, was against the refusal of planning permission rather than non-determination. It is not clear why the applicant, if concerned about the delay to development, did not submit an appeal considerably earlier once the statutory timeframe had expired.

7. Taking all of the above into account, it seems to me that there was some dialogue with the Council and whilst some of it may have been in response to the agent's prompting, there was some constructive engagement from the officers. Furthermore, the applicant was content to continue discussions with the Council despite having the option to submit an appeal against non-determination much earlier in the process. The applicant was cognisant of the time being taken by the Council but nonetheless appears to have been content for the Council to continue to determine the application.

8. Accordingly, whilst the overall delay in the Council making a decision was unduly long, I am not persuaded that the timeframe between expected decision date and issuing the decision caused unnecessary or wasted expense to the applicant.

Substantive Grounds

9. It is evident from my main decision that I have agreed with the Council in respect of the highway safety matter and that relating to nature conservation.

10. With regard to the issue of fire safety, this is a matter which the London Plan seeks to apply to all developments. The London Plan was adopted in 2021 and so postdates the previous appeal decision. Therefore, it is not altogether surprising that it was not raised as an issue with the previous proposal.

11. There is nothing in the planning application to suggest that fire safety was a consideration in the initial proposal. The appeal statement suggested the use of a fire bucket or extinguisher but with little detail. Whilst there was no need for the applicant to produce a Fire Statement in support of the application, the absence of any information or detail was a legitimate issue for the Council and I do not therefore find their concerns were entirely without merit.

12. Whilst I concluded that on balance the matter could have been addressed by a condition, it does not alter the fact that the applicant did not comply with the policy requirements and did not supply any information or details as part of the application. I acknowledge that resolving this issue would not have altered the overall decision and therefore the Council did not pursue the matter with the applicant. In these circumstances I am unable to conclude that the Council acted unreasonably.

13. The first reason for refusal relates to protected trees along the site's boarder with Kenley Road. This concern essentially comes down to the width of the access into the site and the harm that might result to the trees from this point of access being used to serve the stables. The officer report acknowledges the findings of the previous Inspector in relation to trees and the impact of the previous scheme.

14. There are undoubtedly some legitimate concerns as to whether a larger vehicle or one say towing a horse box for example could make the turn into the site in one movement. Whilst these relate principally to matters of highway safety,

there could be some consequential damage to the trees, particularly if a vehicle were to misjudge the entry.

15. Despite my conclusion on how the trees could be protected from accidental damage, the current scheme and its potential effect on some of the protected trees is not completely the same as the previous proposal and therefore the Council was entitled to raise this as a concern. The applicant's evidence included a short statement on the fencing around the site and a restatement of the access being existing. It did not appear to directly respond to the Council's concerns about damage to the trees as a result of how the access might be used.

16. Overall, the reasons for the refusal were not unsubstantiated, and the Council's judgement was reasonably exercised.

Conclusion

17. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Stewart Glassar

INSPECTOR