
Costs Decision

Site visit made on 5 April 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 MAY 2023

Costs application in relation to Appeal Ref: APP/L5240/W/22/3306049 14 Preston Road, Upper Norwood, Croydon, London SE19 3HG

- 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 Mrs Leah Feldman of Soflor Holdings Limited 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 planning permission for the erection of a single dwellinghouse and vehicle crossover fronting Grecian Crescent.
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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 (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. Paragraph 048 of the PPG states that where it is clear the local planning authority (LPA) will fail to determine an application within the time limit, it should give the applicant a proper explanation. If an appeal is allowed in such circumstances, the LPA may be at risk of an award of costs if the Inspector concludes there were no substantive reasons to justify delaying the determination, and that better communication with the applicant would have enabled the appeal to be avoided altogether.
4. Paragraph 049 of the PPG advises that LPA's will be at risk of an award of costs for, amongst other things, unreasonably failing to determine planning applications, preventing or delaying development which should clearly be permitted, failure to substantiate each reason for refusal, making assertions about a proposal's impact which are unsupported by any objective analysis and resisting development on grounds capable of being dealt with by conditions.
5. The evidence before me confirms that prior to submitting an appeal, the applicant made several attempts to communicate with the LPA to establish when a decision might be made. Despite agreeing numerous dates, beyond the original target determination period, the LPA continued to fail to issue a decision based upon the submitted plans and documents or to request any additional information, amendments or to communicate to the applicant any concerns or likely recommendation.

6. As part of the appeal process the LPA suggested it would have refused planning permission for 4 reasons. The suggested reasons for refusal relate to matters that are either unsubstantiated or that could have been addressed by better communication with the applicant or by the imposition of planning conditions.
7. The first reason for refusal related to the failure of the application to demonstrate that the proposal would provide a minimum of two covered and secured cycle storage spaces within the curtilage of the dwelling. The plans submitted with the application clearly identified such a provision, which if unacceptable, could have been refused, amended by request or dealt with by way of appropriately worded planning conditions, which clearly set out which elements of the submitted drawings had been granted, and that notwithstanding the cycle parking (and bin storage) shown on the submitted drawings, what additional measures must be submitted to and approved by the LPA, prior to commencement or occupation of the dwelling.
8. The second reason for refusal related to the failure of the application to demonstrate the rooms in the roof space would have appropriate headroom. The scale drawings submitted with the application included a sectional drawing, which demonstrated the central area of the roof space to be used, and its floor to ceiling height, which ranges from 1.5m to over 2.3m. As such this reason was unsubstantiated.
9. The third and fourth reasons for refusal related to the width of the vehicle crossover and the size of the proposed parking area. I note from the email correspondence submitted that a site visit had taken place, at which point the plans would have been looked at in some detail by the Planning Officer. Such minor concerns should have been noted by this point in the application process, and either communicated to the applicant to amend, or have been dealt with by way of suitably worded conditions. Concerns regarding visibility of a footway that does not exist, over a 0.9m high boundary wall and railings, were unsubstantiated.
10. Had the LPA communicated their concerns to the applicant or issued a decision in a timely manner, either with conditions to address the outstanding concerns or with reasons for refusal that clearly explained any conflict with those policies most relevant to the proposal, amendments could have been made, avoiding the need for this appeal altogether.
11. Whilst I acknowledge the high work loads faced by LPA's, this does not excuse the lack of communication regarding this relatively simple case. The issues eventually raised such as the amount of hardstanding and parking and a query regarding headroom in the roof space, did not require specialist advice from consultees and could have been dealt with by a quick look over the plans and a call or email to the agent, advising how to move things forward within a reasonably agreed timescale, in order to achieve a positive outcome and to avoid the need for an appeal, which would inevitably increase workloads for both parties. Matters relating to bin and cycle storage could have been conditioned.
12. The LPA's actions, or lack of, delayed development which should clearly have been permitted having regard to its compliance with the most relevant policies in the development plan. The evidence submitted by the LPA fails to substantiate the delay in determining the application or the suggested reasons for refusal that were put forward at the appeal stage. It is clear that better

communication with the applicant could have avoided the need for this appeal altogether.

13. This amounts to unreasonable behaviour by the LPA, which has led to the unnecessary wasted expense of the applicant having to pay an agent to prepare and submit an appeal, to respond to the LPA's eventual case and on time spent preparing and responding to this application for costs.
14. 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

15. 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 Soflor Holdings Limited, 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.
16. 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.

R Bartlett

INSPECTOR