



Costs Decision

Site visit made on 20 March 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 June 2023

Costs application in relation to Appeal Ref: APP/L5240/W/22/3306935 Garages at Land adjoining 27 Helder Street, South Croydon, CR2 6HT

- 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 M Mehta of Sterling Rose Homes for a full award of costs against London Borough of Croydon.
 - The appeal was against the refusal of the Council to grant planning permission for the demolition of 3no. garages and the erection of one two-storey 4-bed house, including associated works.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance ("the 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. The nature of the applicant's claim for an award of costs was set out in their main appeal statement, with two principal elements. These are that firstly, although the applicant "attempted to create an open dialogue with the Council" and that "there could have been dialogue to address any concerns that were raised", e-mails were not responded to by the Council; in response to the Council's comments on the costs claim, the applicant also drew attention to the fact that the Council had not determined the planning application within the statutory time limit. The second element is that the reason for refusal relating to the proposed roof was not substantiated with reference to any relevant planning policy or guidance.
4. Paragraph 049 of the PPG gives examples of unreasonable behaviour which may give rise to a substantive award of costs against a local planning authority. These include "refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal", "failure to produce evidence to substantiate each reason for refusal on appeal", and making "vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis"¹. Paragraph 048 of the PPG states that "if it is clear that the local planning authority will fail to determine an application within the time limits, it

¹ Paragraph: 049 Reference ID: 16-049-20140306

should give the applicant a proper explanation”². Although the applicant has not referred directly to the PPG, in my view the claim falls broadly within the scope of these examples.

5. I shall address the second element of the applicant’s claim first, as it is relatively quick and straightforward for me to do so. The Council’s officer report and decision notice clearly related its concerns about the proposed roof form to relevant development plan policy. These concerns were elaborated upon at appeal stage. I therefore find no unreasonable behaviour by the Council whatsoever in this respect.
6. Turning to the other elements of the claim, rather than the Council refusing to enter into pre-application discussions, the applicant elected not to seek them. Two reasons have been put forward for this; firstly, that the applicant’s experience engaging on other sites within the borough had generally been negative, with long timescales and poor (or sometimes no) feedback being given. Secondly, that the proposed development in this case was minor, had taken account of the reasons for which a previous planning application had been refused, and that “the Council could have still discussed any matters with us”.
7. The applicant has provided copies of three e-mails to the Council during the period the planning application was being determined; one from 9 June 2022 (in response to the planning application being validated) inviting an early assessment of the proposal, a short message from 22 June 2022 seeking an update, and a final message from 5 July 2022 which also sought an update, but in more detailed terms than the previous e-mail. The only reply appears to have been automatically sent in response to (I infer) the 5 July e-mail, stating that “due to the Council’s financial situation and an industry-wide shortage of Local Authority Planning Officers [...] we have taken the decision to focus on clearing [a backlog of planning applications] during the whole of the week 4th to 8th July 2022. [...] We will not be taking calls or responding to e-mails during this time”. It goes on to say that “on 11 July normal service will resume” and the Council would “do [its] best to provide an update on your application or query as soon as we are able to”. The applicant describes these e-mails as “a sample thread”; however, the Council has not suggested that there are significant omissions or that the messages in any way misrepresent the communication between the parties.
8. The Council responds that it has “well-known” financial challenges, which it says means that it has “prioritised decision-making over communication”, resulting in “improved decision-making timescales”. It also commented that it would “ideally like to engage with applicants on schemes submitted to overcome refusal reasons” but that “where these are not straightforward changes (as was the case here), we are seeking to determine applications”. The applicant’s final comment indicates that they considered there was an opportunity to “marginally revise the application through the submission of revised plans” and “possibly mutually extend the application by a few days”, due to the “marginal nature of change required being less mass/bulk than the originally consulted refused scheme”.
9. The statutory deadline for determining the planning application was on Thursday 4 August 2022, but the decision notice was issued on Monday

² Paragraph: 048 Reference ID: 16-048-20140306

8 August. There is nothing before me to indicate that any extension of time was sought by the Council, or that the failure to meet the deadline was communicated to the applicant.

10. It was the applicant's decision not to seek pre-application discussions and, even if the negative comments about engagement on other schemes are well-founded, they are not demonstrative of unreasonable behaviour on the part of the Council in this case. Amended plans were not put before me during the appeal. As I dismissed the appeal, it would not be appropriate for me to address the question of whether any changes might have resulted in the application being approved; to do so would be to unreasonably fetter a future decision maker.
11. Nevertheless, it is not satisfactory that an applicant should seek an update on the progress of a planning application only for the next correspondence a month or so later to be the decision notice refusing planning permission. Notwithstanding the Council's financial problems, it is clear to me that its communication in dealing with the planning application has fallen short of what might reasonably be expected. To this extent, I therefore consider that the Council's behaviour was unreasonable in the terms set out in the PPG. However, in order to make an award of costs I also need to be satisfied that this has resulted in unnecessary or wasted expense.
12. As I have set out in paragraph 8 above, the applicant considers that relatively minor changes might have made the proposed development acceptable. However, the reasons for which the appeal was dismissed, as I have set out in my main decision, go beyond the matter on which the applicant has focused. Overall, I found that the Council's reasons for refusing planning permission were justified. It is not clear that events would have followed a different course even if the Council had dealt with the planning application (and communication with the applicant) more effectively and efficiently. In my view the appeal would have been pursued in any case, and I cannot therefore conclude that the Council's actions have led to unnecessary or wasted expense for the applicant.
13. The applicant's final comments on the claim for costs indicated that another planning application had been submitted for the appeal site and was being recommended for approval by Council officers³. Although it is described as "similar" to the appeal scheme, I have not been provided with any further details, and it does not therefore carry weight in support of the claim.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector

³ LPA Ref: 22/03921