



Costs Decision

Site visit made on 4 July 2023

by J Wellstead BA(Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2023

Costs application in relation to Appeal Ref: APP/L5240/W/21/3284248 134 Auckland Road, Upper Norwood, London, SE19 2RQ

- 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 Alexandra Kent Jones for a full award of costs against 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 three storey side extension, single storey side/rear extension, erection of rear balcony at first floor level and internal demolitions to facilitate building works to main house. Addition of hard and soft landscaping to front, side & rear gardens.
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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. Costs can include the time spent preparing information for an appeal and the use of consultants to provide technical advice. The PPG advises that Inspectors can take into account the behaviour and actions at the time of the planning application when considering whether or not costs should be awarded.
4. The applicant contends that the Council did not positively or proactively engage in discussions to progress the design of the proposed scheme, and that the Council's delay in not making a timely decision has caused the applicant to appeal, thereby causing unnecessary expense.
5. The applicant made a number of attempts to engage with the Council during the determination of the 'live' application. The Council have stated that officers were in contact with the applicant a number of times providing updates on the application, confirming their non site visit attendance and with their Conservation Officer raising concerns with the scheme and identifying required changes. I do have details of these attempts but I do not have a copy of the email requesting a time extension.
6. There is no obligation on Councils to enter into negotiations during 'live' planning applications and the Council's website sets out guidance on this, encouraging pre-application discussion unless changes are minor. It would not be unreasonable for the applicant to seek pre-application advice from the Council before they submitted an application, and I note that there is

disagreement between the parties whether or not pre-application advice and engagement was taken up by the applicant. The Framework encourages applicants to engage in pre-application discussions, although it is not mandatory.

7. I therefore do not find that the Council acted unreasonably with regards to 'live' negotiations or any advice the applicant thought they should have received from the Council.
8. I have been provided with a Council email to the applicant dated 10th September. In it the Council apologises for the delay in responding but provides no further explanation for the delay. The Council goes on to advise the applicant it would not be possible to amend the scheme under the current application and unless the application is withdrawn, then permission will have to be refused. The council then offered their pre-application service to discuss a smaller scheme at the property should the applicant wish to go down that route.
9. The applicants cost application indicates the Council sent their final feedback seven weeks after the decision was due. There is no satisfactory explanation why the Council did not issue the refusal notice after telling the applicant it would be refusing the application. The appeal was lodged around a month later. In the absence of evidence to the contrary, I find the council acted unreasonably in this regard.
10. As I find the Council has acted unreasonably regarding non-determination, I now need to consider whether this unreasonable behaviour has resulted in unnecessary or wasted expense on the part of the applicant. Both tests need to be satisfied before an award of costs can be made.
11. The applicant was advised in advance that the council was going to refuse the planning application and was given a detailed summary of the reasons why. I have found the proposed development would be unacceptable due to reasons outlined in the appeal decision. The applicant chose not to withdraw the application, as advised by the Council, indicating that the applicant was prepared to contest the decision at appeal and incur the associated expense of doing so. I am therefore of the view the appellant would have lodged an appeal in any event, together with the associated expense such action would incur.

Conclusion

12. I find the Council acted unreasonably in not determining the application within the allocated timescale and for failing to issue the refusal notice in a timely fashion after it advised the applicant it would be refusing the application. However, I do not consider this caused the applicant to incur unnecessary expense as the appeal could only have been avoided if the applicant had withdrawn the application, which they chose not to do.
13. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG and alleged by the appellant, has not been demonstrated. An award for costs is therefore not justified.

J Wellstead

INSPECTOR