
Costs Decisions

Site visit made on 14 November 2023

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 December 2023

Appeal A

**Costs application in relation to Appeal Ref: APP/L5240/W/23/3314810
Underwood, Ballards Farm Road, Croydon, CR2 7JA**

- 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 Sterling Rose homes 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 the development of nine self-contained homes, together with landscaping, boundary treatments, car parking, cycle parking and bin storage.
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Appeal B

**Costs application in relation to Appeal Ref: APP/L5240/W/23/3314571
Underwood, Ballards Farm Road, Croydon, CR2 7JA**

- 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 Sterling Rose homes 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 the construction of three self-contained homes, together with landscaping, boundary treatments, car parking, cycle parking and bin storage.
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Appeal C

**Costs application in relation to Appeal Ref: APP/L5240/W/23/3315126
Underwood, Ballards Farm Road, Croydon, CR2 7JA**

- 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 Sterling Rose homes 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 the erection of single storey side and rear extension, two storey front extension to create four self-contained homes, together with landscaping, boundary treatments, car parking, cycle parking and bin storage.
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Decisions

1. Appeal A - the application for a full award of costs is refused
 2. Appeal B - the application for a full award of costs is refused
 3. Appeal C - the application for a full award of costs is refused.
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Procedural Matters

4. Whilst the applicant for costs differs from the named person who made the application for planning permission or submitted the appeal they are all from the same company. Accordingly, these claims for costs whilst considered individually are considered in this single decision.

Reasons

The submissions by Sterling Rose Homes

5. The claims are each made under the following grounds which cover procedural matters. The grounds of claim are the same for each appeal. In summary these concern the following matters:
 - The Council's refusal to engage in a Planning Performance Agreement (PPA)
 - Delays in the times taken for the Council to respond to a Planning Performance Agreement (PPA) and the validation of the application for planning permission, and
 - The Council did not allow the applicant to view objections to the original application submitted for planning permission.
6. These matters have led to the applicant seeking legal advice in respect of the likelihood of success on appeal which amount to unreasonable behaviour leading to unnecessary or wasted expense.

The response of the Council of the LB of Croydon

7. The Council contend that it behaved reasonably at all times against a background of severe restrictions on budget leading to staffing redundancies. Its response to the applicant's grounds of claim:
 - PPAs are not mandatory,
 - A pre application meeting did take place resulting in further negotiation when the Council made clear its concerns on the proposed scheme. This was followed up with a letter which was not supportive of the scheme which had been presented,
 - The applications were validated within three days unless further information was required after which the applications were validated within a reasonable time,
 - The Council's planning web site displays the addresses of respondents including whether they objected or not. The inclusion of the actual consultation responses received would involve further work and budget given the requirements of the of GDPR¹, and
 - Even if the Council had determined the three applications in time they would have been refused possibly leading to the same appeals.

Reasons

¹ General Data Protection Regulation

8. Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
9. The corporate review of service delivery following the S114 Notice led to PPAs not being pursued by the Council. This was unfortunate but there is no legal requirement for the Council to engage with these requests.
10. Email evidence points to delays in the Council responding to the applicants requests for information. Although there was a considerable delay in the Council following its up oral advice at the pre application meeting with a written response it was the applicant's decision to submit the applications for planning permission at the time they did. The Council's written advice was comprehensive and covered many of the issues which formed its reasons for refusal in each scheme. It is noted that this advice did not cover the site of Appeal C. Whilst the delay may have been unreasonable it did not lead directly to the applicant submitting the application when they did.
11. There is no information before me on how the two applications which were not validated on initial receipt failed the Council's validation checklist. It seems from the Council's response to this claim that each application would appear to have been managed within reasonable timescales.
12. The failure to send on the comments from interested parties should be routine. This is irrespective of the resource issues which the Council states and amounts to unreasonable behaviour. However, it is unclear how the receipt of the detailed comments would have informed the design of subsequent schemes and why the applicant sought legal advice on this matter.

Conclusions

13. Whilst it is evident that there were delays in the Council's approach in the lead up to the submission of the applications which amounts to unreasonable behaviour it is unclear, based on the evidence before me, how these have led directly to unnecessary expense incurred by the appellant. The decision to appeal was that of the applicant alone and other options remained open.
14. I do not consider that either individually or in combination the Council's actions amount to a level of unreasonable behaviour which have led to unnecessary costs which could justify a successful claim.

Stephen Wilkinson

INSPECTOR