



Costs Decision

Site visit made on 13 February 2024

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Costs application in relation to Appeal Ref: APP/L5240/W/23/3320441 19 Ashburton Road, Croydon CR0 6AP

- 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 Abbas Dattoo 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 reduction in size and conversion of existing outbuilding into a self-contained 2 bedroom dwelling.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. The Council failed to issue a notice of its decision of the application within the prescribed period. Following the appeal, it indicated that it would have refused planning permission on the basis the proposal would fail to provide future occupiers with adequate living conditions with particular regard to outlook.
4. The appeal site has been subject to a number of appeals in recent years for a variety of schemes related to the existing outbuilding. Of these, appeal APP/L5240/W/19/3242553 ('the 2019 appeal') was of a very similar layout to the proposal subject to this most recent appeal. Although ultimately dismissed, the previous Inspector found that the scheme in the 2019 appeal to be acceptable with regard to living conditions. The scheme in the 2019 appeal would have contained windows closer to the existing garden boundary wall than was proposed in this latest iteration.
5. Further appeal decisions have since been issued in relation to other schemes on the appeal site, where the issue of living conditions with particular regard to outlook were issues. Whilst some these appeals were also dismissed, none was directly comparable to either this appeal, or indeed the 2019 appeal. In such circumstances, in continuing to raise this issue as a matter of concern, the Council failed to have adequate regard to the findings of a previous Inspector. This was unreasonable.
6. Following the issuing of three further appeal decisions in relation to this site, the Council later withdrew its only concern. However, by this point the applicant had been required to compile an appeal case and would have incurred expense in doing so.

7. The applicant has cited numerous examples of other developments, both in and out of the borough, as examples of a lack of consistency in decision making. Whilst I accept that it is possible there may be some similarities between some of these cases and the appeal proposal, each case should be considered on its merits. Whilst consistency of decision making is important, the examples presented do not lead me to conclude that the Council has acted unreasonably inconsistently in this regard.
8. The appeal was made against the failure of the Council to issue a notice of their decision within the prescribed period. PPG advises that local planning authorities, in any appeal against a failure to determine an application within the statutory period, should explain the reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
9. It also advises that if an appeal in such cases is allowed, that the local planning authority may be at risk of an award of costs, if there were no substantive reasons to justify delaying the determination, and better communication with the applicant would have enabled the appeal to be avoided altogether.
10. I have not been provided with full details of the Council's relevant scheme of delegated powers or planning committee procedures. Therefore, it has not been shown that the Council's explanation for the delay being as a result of the planning application being elevated to a committee decision and therefore subject to the time constraints of the planning committee cycle, is an unreasonable one.
11. Nevertheless, for the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

12. 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 Mr Abbas Dato, 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.
13. 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.

C Harding

INSPECTOR