



Costs Decision

Site visit made on 3 June 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Costs application in relation to Appeal Ref: APP/Q3820/W/19/3243650 42-44 Brighton Road, Southgate, Crawley RH10 6AT

- 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 Turnbull Lane Ltd for a full award of costs against Crawley Borough Council.
 - The appeal was against the refusal of outline planning permission for the demolition of 42-44 Brighton Road, Crawley and the erection of a new residential building comprising of 20 no. 1 and 2 bedroom apartments and the creation of a new vehicular access from Stonefield Close and associated works.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG¹ also sets out an expectation that parties will normally meet their own expenses. Furthermore, the PPG² states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.
3. The appellant alleges that, in reaching its decision, the Council had insufficient regard to an appeal decision within the Crawley Borough that was brought to their attention. Whilst I can see no evidence that regard was had to that decision, the evidence before me does not indicate that the circumstances are directly comparable to the extent that the same stance should have been taken with respect to affordable housing. Accordingly, I do not find that the other appeal decision is reason for the Council to have reached a different decision. Therefore, even if more explicit regard was had to that appeal decision within the Officer Report, I have no basis to conclude that it would have resulted in a different decision and the avoidance of the need to submit an appeal.
4. Furthermore, whilst it is alleged that undue weight was given to an appeal decision in the London Borough of Redbridge, I find that that decision was

¹ Paragraph: 028 Reference ID: 16-028-20140306

² Paragraph: 050 Reference ID: 16-050-20140306

primarily utilised to amplify the case that was made in respect of Paragraph 64 of the National Planning Policy Framework (The Framework). The Council do not make a direct comparison between developments and I did not find that the Redbridge appeal decision was misinterpreted or mischaracterised. Moreover, I do not find that the phrasing of Paragraph 64 of The Framework was misapplied or misinterpreted. Accordingly, I do not find that unreasonable behaviour occurred in these respects.

5. The Framework states that the weight to be given to a viability assessment is a matter for the decision-maker having regard to all the circumstances in the case. In this respect, the Council clearly had regard to the findings of the viability assessment in the determination of the application. Therefore, I do not find that the approach taken towards the determination of the application represents unreasonable behaviour.
6. The evidence of the appellant indicates that communication between the main parties occurred in the time between the submission and the determination of the application. Whilst I acknowledge that the appellant is frustrated at the time at which a relevant factor was raised, I do not consider that this was an example of obstructive behaviour by the Council and, as such, did not cause an appeal to be submitted that would have otherwise been avoidable.
7. At the time of the determination of the application, no legal agreement was in place to secure planning obligations in respect of tree planting and open space. The application submissions indicate that the appellant was aware of the requirement to secure planning obligations at an early stage and, therefore, had the opportunity to submit a legal agreement with the application or prior to its determination. As the absence of a completed legal agreement meant that the necessary mitigation was not secured at the time that the Council made its decision, I find that it was not unreasonable for the Council to have refused the application for that reason. As such, the actions of the Council do not represent unreasonable behaviour that led to the submission of an unnecessary appeal.

Conclusion

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

Ian Harrison

INSPECTOR