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## Costs Decision

Site visit made on 7 December 2020

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 December 2020**

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### **Costs application in relation to Appeal Ref: APP/L5240/W/20/3253386 28 Grasmere Road, Purley CR8 1DU**

- 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 Ryan Luffman of Crystal Properties UK Ltd for a full award of costs against the Council of the London Borough of Croydon.
  - The appeal was against the refusal to grant approval to details required by conditions of a planning permission for demolition of a bungalow and garage, erection of three storey building, creation of eight self-contained flats (C3), with associated landscaping, terraces, refuse, cycle stores and car parking.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. Behaviour and actions prior to the appeal can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

#### *External facing materials*

3. In response to a progress enquiry from the appellant the case officer provided a closed list of details that were not included in the Supporting Statement. This comprised 'specification of balustrades, brick soldier coursing, privacy screens, dog tooth dentil and corbel brick detailing'. The information was duly provided, along with details of timber boarding. Had the Council required anything additional it should have requested it when it had the opportunity. To refuse the application on the grounds of missing information that it had not previously mentioned was unreasonable, especially since the appellant had made several progress enquiries without receiving a substantive response.
4. In the event, I have found that the information being sought by the Council was not necessary to discharge a condition on external facing materials. The authority's insistence on receiving this information was also unreasonable.

#### *Landscaping scheme*

5. The case officer initially advised the applicant that the landscaping information 'appeared acceptable' but later stated that there were insufficient details

regarding the boundary treatment – height and ground levels. Details of all soft and hard landscaping were requested, including the play space. A revised landscaping scheme was provided but this did not provide adequate information. The Council was under no obligation to invite further amendments, but it should have responded to later emails from the applicant seeking confirmation that the submitted details were acceptable. The failure to respond to legitimate requests for a progress update was unreasonable, as this may have provided an opportunity to resolve the issues without resort to an appeal.

#### *Sustainable Urban Drainage System (SUDS)*

6. A revised SUDS Assessment was submitted in response to comments from the Lead Local Flood Authority (LLFA). This indicated that the site is not suitable for infiltration and that controlled discharge is required. Based on Thames Water asset plans, the only solution was to connect to the foul sewer. The Council was rightly concerned regarding this proposal. The application should have included evidence of liaison between the developer and Thames Water. It did not, and therefore the local planning authority should have undertaken its own consultation. To refuse the application prior to seeking comments from the statutory undertaker was unreasonable.

#### **Conclusion**

7. The Council is under no obligation to seek additional information in relation to an application for discharge of conditions. However, applications for discharge of conditions should be given the same priority as planning applications in order to avoid delaying development. Furthermore, the National Planning Policy Framework advises local planning authorities to approach decisions on proposed development in a positive and creative way. There was therefore an onus upon the Council to be pro-active. In my opinion, its approach was poor. Had it responded to emails promptly, been consistent in the information it was requesting and carried out the necessary consultations, the appeal may have been avoided in its entirety. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has been demonstrated. A full award of costs is justified.

#### **Costs Order**

8. In the 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 Ryan Luffman of Crystal Properties UK Ltd, the costs of appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. 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.

*Robert Parker*

INSPECTOR