



Costs Decision

Site visit made on 18 May 2021

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th June 2021

Costs application in relation to Appeal Ref: APP/L5240/W/20/3259256 1a Selsdon Road, South Croydon, London, CR2 6PU

- 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 Surreywide Limited for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class M, Paragraph M.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a change of use of the rear part of a ground floor A2 shop to a C3 residential studio unit with associated works.
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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 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 proposed development was for a change of use of part of a retail unit to a studio flat. The retail unit is located in a primary shopping area and is within a row of shops allocated a secondary retail frontage designation in the Council's Local Plan (LP). The Council's decision notice indicated that the proposed studio flat would be situated within the secondary retail frontage and would, on that basis, conflict with Policy DM4 of the LP which relates to development in local shopping centres. Accordingly, the Council refused to grant prior approval for the proposed development.
4. The appellant contended that the situation of the proposed studio flat lay outside of the 'boundary' of the secondary retail frontage, and should therefore have been considered under a different paragraph in Policy DM4. The conflict arose because of the way that the designation of the secondary retail frontage has been displayed on the LP Policies Map.
5. Despite the fact that I agree with the Council on the interpretation of the secondary retail frontage with regard to this current case, the appellant has made a strong case for inconsistency in the way that the Council has determined this case when compared with a similar recent case relating to a shop unit only two properties distant from this appeal property.

6. In this earlier case, the Council initially refused to grant prior approval for a change of use from retail floorspace to a studio flat at the rear of a shop unit on the basis that the flat would be within the secondary retail frontage. However, a subsequent application shortly afterwards, for a similar proposal at the same property, was granted approval early in 2019 on the basis that the flat lay outside of the secondary retail frontage designation. The decision on the current scheme uses a similar reasoning to the refusal to grant approval to the first proposal at the nearby property.
7. I accept that the Council has provided information to back up its decision in this current case, and I agree with the reasoning. However, I find that the inconsistency in its interpretation of its own planning policy in similar cases in the recent past represents unreasonable behaviour. It would also appear that the appellant was unable to ascertain the rationale behind the inconsistency and that this affected the decision to appeal and the nature of the appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Surreywide Limited, 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.
10. 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.

J D Westbrook

INSPECTOR