



Costs Decision

Site visit made on 16 June 2021

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 01 July 2021.

Costs application in relation to Appeal Ref: APP/L5240/W/20/3251282 1A St Dunstan's Road, South Norwood, London SE25 6EU

- 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 William Lawrence for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against a refusal to grant approval required under Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015, for change of use from light industry (Use Class B1c) to 4 x dwellinghouses (Use Class C3).
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Decision

1. The application succeeds, and an award of costs is granted.

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 basis on which prior approval applications for changes of use should be considered is set out in the Order¹, at Schedule 2, Part 3, paragraph W(3). There it states that the authority may refuse an application where the proposal fails to comply with the conditions, limitations or restrictions applicable to the development, as specified within that Part of the Order itself, or where the applicant has provided insufficient information to establish such compliance. It is clear from the terms of this paragraph that these are the only circumstances in which such an application may be refused.
4. In the present case, the reason for refusal given by the Council was that the development would result in a loss of employment-generating land and use, contrary to various planning policies. However, loss of employment land is not included amongst the matters specified in Condition PA.2(1)(b), and therefore is not one for which prior approval was required.
5. From the Officer's report, it is apparent that the loss of employment land was seen by the Council as relevant to matter PA.2(1)(b)(iv), relating to the sustainability of industrial and other services. But the connection to that matter is not discernible from the refusal reason itself. Indeed the refusal notice makes no reference either to PA.2(1)(b)(iv) or its subject matter, or to

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

- any of the other matters in PA.2(1)(b). The refusal reason was therefore irrelevant and invalid in relation to this type of application. In refusing prior approval on this ground, the Council acted unreasonably, forcing the applicant to engage in an appeal process that should have been unnecessary.
6. Having regard to the refusal notice and the Officer's report, which together comprised the Council's full case, it is evident that at no stage of the application or the appeal did the Council actually address or engage with the only issue that was relevant under PA.2(1)(b)(iv), which was the appeal proposal's effect on the sustainability of industrial and storage or distribution services in the area. Instead it substituted the issue of loss of employment land, which to my mind is clearly separate and distinct. For the reasons given in the appeal decision, that issue was not relevant in this case. In focussing exclusively and erroneously on that issue, the Council caused the appellant to undertake additional work and thus to incur unnecessary and wasted expense. The failure to understand the relevant procedure, and to correctly identify the matters that were relevant, was again unreasonable behaviour.
 7. I note the Council's reference to paragraph W(10) of Part 3 of the Order, which requires an authority to have regard to the NPPF, in so far as may be relevant to the subject matter, as if the application were a planning application. However, the Council has not at any stage identified any such paragraphs of the NPPF that it considers relevant. And in any event, as a statutory instrument, the terms of the Order itself take precedence over any national or local policy. For the reasons set out earlier in this decision, the Council's approach in the present case did not have proper regard for paragraph W(3) of the Order, and the limitations that that paragraph imposes with regard to the matters that can be taken into account in prior approval applications.
 8. I conclude that the Council's handling of the application and appeal was unreasonable. A full award of costs is therefore due.

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 Mr William Lawrence 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.

JS Felgate

INSPECTOR