



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: 6th July 2021

Costs application in relation to Appeal Ref: APP/L5240/W/20/3248065 Land to the rear of 8a - 12a Reddown Road, Coulsdon, Surrey CR5 1AX

- 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 March 21 Ltd for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of planning permission for the erection of 5 new dwelling flats.
-

Decision

1. The application for a full award of costs is refused, but a partial award is made, in the terms set out below.

Reasons

2. 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 Council's refusal of outline planning permission was based on three refusal reasons (RRs). RR1 related to alleged harm to the character of the area. In my appeal decision, I have come to a different conclusion on this matter. In this respect, my judgement is closer to that of the Council's officers, who recommended permission, than that of the Committee members who took the decision to refuse. But nevertheless, the issue at the heart of RR1 was essentially a subjective one. It was therefore not unreasonable for the Committee to take the view that they did, on behalf of the Council, in refusing permission on this ground.
4. The Council's RR2 related to the impact on the Station pathway. In my decision, I have taken the view that the underlying issue in relation to access is a somewhat broader one, relating to the quality of the access available via that route, as well as the development's effects on it. But nonetheless, the issue identified by the Council is relevant, and in broad terms I have agreed with the Council that the impact in this respect would be unacceptable, particularly during the construction phase. Consequently, although RR2 failed to fully identify the nature or the extent of the harm relating to access, it was not unreasonable of the Council to refuse permission on that ground.
5. RR3 related to ground contamination, and the potential for pollution of controlled waters. In this case, as explained in the appeal decision, the appellant's position was supported by Policy DM24 of the CLP, which clearly

allowed for the possibility of granting outline permission subject to relevant conditions. I accept that the Council's stance was in line with the advice received from the EA, as a statutory consultee. But the Council should have considered that advice in the context of the relevant policies of the adopted development plan, and any other consultees, including their own Environmental Health Officer. Had they done so, these considerations should have led them to deal with the matter of contamination by way of conditions. In the circumstances, the decision to refuse permission on the grounds of RR3 was unreasonable.

6. I note the other matters raised. However, the Council had discretion to accept representations submitted after the previously advised deadline. And the error in the Committee minutes does not appear to have influenced the outcome of the decision.
7. To conclude, I find that the Council's unreasonable behaviour, in refusing permission on the grounds of RR3, caused the appellant to incur unnecessary costs in contesting the issue of contamination. A partial award of costs is therefore due in respect of that issue. No other unreasonable behaviour has been demonstrated, and therefore the award is limited to this single matter.

Costs Order

8. 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 March 21 Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of Refusal Reason No 3, relating to contamination; 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.

J S Felgate

INSPECTOR