



Costs Decision

Site visit made on 4 May 2021

by Graham Wyatt BA (Hons) MRTPI

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

Decision date: 13th September 2021

Costs application in relation to Appeal Ref: APP/A5840/W/20/3261514 290 Walworth Road, London SE17 2TE

- 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 SBR Properties for a partial award of costs against the Council of the London Borough of Southwark.
 - The appeal was against the refusal of planning permission for a development described as the "redevelopment of 290 Walworth Road and 2-6 Carter Place to create 6 x residential units and 1 x basement and ground floor commercial unit together with cycle parking and refuse storage (Resubmission of application ref – 19/AP/0442)".
-

Decision

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

Reasons

2. National Planning Practice Guidance (the Guidance) advises that costs may only 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 appeals process. The Guidance further sets out that parties in planning appeals and other planning proceedings normally meet their own expenses. Additionally, the Guidance states that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. In considering a revised scheme at the site, the applicant argues that the Council should not have referred to the loss of 2-6 Carter Place within its reason for refusal, as this matter had been deemed acceptable by an Inspector considering a previous appeal¹ (the previous appeal). Furthermore, the applicant argues that as the proposed scheme was similar to other developments in the vicinity that the Council has approved, there is an inconsistency in its decision making and it has failed to approach its decision in a positive and creative way.
4. It is evident that the scheme before me is not the same as that which the previous appeal sought permission, with several differences such as the number of properties proposed and a reduction in the overall scale, height and massing of the development. However, it still proposes the total loss of 2-6 Carter Place.

¹ APP/A5840/W/19/3236582 dated 17 February 2020

5. The Council state that although the loss of 2-6 Carter Place was referred to within its decision notice, it is only one element of the full reason for refusal. However, it is clear that the loss of 2-6 Carter Place, defined as buildings of significance within the decision notice, was a matter of concern for the Council and one that it considered would fail to preserve the special character of the Walworth Road Conservation Area (CA).
6. There should be certainty within the planning process and I have a degree of sympathy with the applicant with regard to the loss of 2-6 Carter Place. It is evident that whilst the Inspector found the previous appeal scheme unacceptable as it would fail to preserve or enhance the CA, this was as a result of the scale, form and design of the proposal. However, notwithstanding this conclusion, it is clear that the Inspector considering the previous appeal found the loss of the buildings at 2-6 Carter Place acceptable as it would result in negligible loss of significance from the CA. Thus, an award of costs on this particular matter is justified.
7. Although there has been similar schemes approved within the vicinity of the appeal site, these did not propose developing a building that has been identified within the Walworth Road Conservation Area Appraisal 2016 as one that has "*considerable townscape merit*". Therefore, notwithstanding the amendments that were made to the scheme following the previous appeal, I am not persuaded that the Council acted unreasonably in reaching a similar conclusion on the proposal and this does not represent an inconsistency in decision making nor a failing to take into account paragraph 38 of the Framework. Thus, an award of costs on this matter is not justified.

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 Southwark shall pay to SBR Properties, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing reason for refusal one relating to the loss of 2-6 Carter Place; 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 Southwark, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Wyatt

INSPECTOR