



Costs Decision

Site visit made on 12 October 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Costs application in relation to Appeal Ref: APP/P5870/W/21/3272272 Waddon House, 283 Stafford Road, Wallington CR0 4FA

- 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 J Curtis of IDM Properties Ltd for a full award of costs against the Council of the London Borough of Sutton.
 - The appeal was against the refusal of planning permission for demolition of existing bin and cycle storage and erection of a three storey building comprising 8 self-contained flats, 6 off-street car parking spaces and cycle and bin stores, new boundary treatment, landscaping and ancillary works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense. Unreasonable behaviour in the context of an application for an award of costs may be either: procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
3. With reference to the PPG, the applicant submit that the costs application is made on both substantive and procedural grounds. The applicant details a number of pre-appeal matters to be taken into account. Additionally, it is alleged that the Council has acted unreasonably by preventing development which should have been permitted; that it has failed to produce accurate evidence to support its decision; and that it has made vague or generalised assertions about the impact of the proposal.
4. The Council appeals for consideration to be given to procedural oversights in relation to the handling of the appeal application that were remedied as soon as practicable, but also draws attention to the fact that some points are raised in relation to an entirely separate application though related to the same site.
5. In respect of the substantive merits of the current appeal case, the officer report sets out a clear recommendation of approval to be considered by its elected members at the Planning Committee of the Council. The Council submits that the members opted to attribute less weight than officers in reaching their decision to refuse the appeal application and that numerous letters from residents highlighted issues with parking and refuse management that the Planning Committee did not feel they could ignore. Clearly, elected

members of the Council are entitled to take a contrary view, and I accept that elected members often bring a greater understanding of an area or local knowledge to the decision making process.

6. The details of the deferment of the matter from the 6 January 2021 meeting of the Planning Committee have been made available, along with the minutes of the meeting of 3 February 2021, the latter of which are lengthy and set out the seemingly erratic nature of the discussions held on both reasons for refusal. However, a decision must still be well founded and supported by evidence as appropriate. The points made are unsupported with any real analysis and largely overlook not only the previous appeal decision but also the relevant consultee comments supporting the proposal. One such consultee highlights that the refuse collections operate in a similar manner to that proposed without prejudicial highway safety effects yet the appeal proposal has been refused on highway safety grounds related to such occurrences without an evidence basis for such.
7. In view of the above and the lack of evidence to the contrary, the Council's reasons for refusal are not well founded, having been supported by vague and generalised assertions about the proposals impact. The Council therefore acted unreasonably by refusing the application for a reason that could not be substantiated and persisting in objections on an aspect which an Inspector has previously indicated to be acceptable
8. I also need to consider whether the unreasonable behaviour of the Council has resulted in unnecessary or wasted expense on the part of the applicant. It is clear to me that the applicant has incurred unnecessary and wasted expense by lodging the appeal against a refusal that should have reasonably been permitted. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. Whilst the number and range of appeal documents is not suggestive of particularly onerous costs, they were still unnecessarily incurred. Therefore, 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 Sutton shall pay to IDM Properties Ltd, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is invited to submit to the Council of the London Borough of Sutton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Hollie Nicholls

INSPECTOR