
Costs Decision

Site visit made on 17 November 2021

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 NOVEMBER 2021

Costs application in relation to Appeal Ref: APP/Q3820/W/21/3273511 Car Park, Station Way, Northgate, Crawley RH10 1BJ

- 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 Crawley Borough Council for a full award of costs against Simco Homes Limited.
 - The appeal was against the refusal of planning permission for redevelopment of car park to form mixed use residential and commercial scheme.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (the Guidance) states that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural, relating to the process, or substantive, relating to issues arising from the merits of the appeal.
3. The Council seeks a full award of costs on substantive grounds, arguing that the appellant had accepted that the proposal would require amendments before it could be approved and had failed to address the reasons for refusal.
4. The summary of the appellant's statement of case included the following:
"It is acknowledged that a number of revisions to the proposed scheme would have been required to address the matters raised by officers and consultees. However, it is clear that the scale of these required revisions was such that they could have been addressed within a single set of revisions, as has been demonstrated in the amended plans accompanying this statement."
5. The appellant states that the amended plans had been prepared whilst the application was being considered by the Council. The appellant had intended to amend the application but was prevented from doing so by the Council's decision to determine the application as it stood. The appellant considers that the Council's approach was unreasonable. I do not agree, for the reasons given in my decision on the appellant's application for an award of costs against the Council.
6. Taking the appellant's statement of case as a whole, it appears that the amendments were intended to address concerns relating to the internal layout

- of the building (by reducing the reliance on north facing windows), the width of the footway between the loading bay and the building, the design and location of the refuse/recycling store and cycle parking. The amendments also proposed the introduction of some green walls which would have affected the appearance of the proposed building.
7. The Planning Inspectorate's Procedural Guide makes clear that, if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application. Even so, amendments that are intended to narrow the issues in dispute are sometimes accepted in the appeal process, where it can be concluded that no prejudice would arise.
 8. Planning Practice Guidance states that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. For the purposes of this cost's decision, it matters not whether the amended plans submitted with the appeal would have resolved some or all of the Council's objections. It is not for me to comment on the merits of the amended plans. The important point is that having accepted that some changes would be needed, the appellant sought to address those changes within the appeal process. For reasons given in my appeal decision, I have determined the appeal on the basis of the plans that were before the Council. Nevertheless, I do not think that this was a case where the appellant's approach had no reasonable prospect of success.
 9. The appellant has not put forward any mechanism for securing the contributions to trees and open space required by Policies ENV5 and CH6. The appellant's statement of case makes a procedural point that the Council did not communicate the results of its calculations on the level of the contributions. However, there is no response to the substance of the point. To this extent, the appellant acted unreasonably. That said, the Council was able to deal with these matters very briefly in its appeal statement and I do not think that material unnecessary expense was incurred.
 10. Although I have identified a number of significant planning objections in my appeal decision, the appeal was not entirely without merits. The scheme would have provided new housing and commercial floorspace in an accessible location on the edge of the town centre. I have found in the appellant's favour in relation to the historic environment and car-free housing. In conclusion, looking at the case as a whole, I do not consider that the appellant behaved unreasonably by making this appeal.

David Prentis

Inspector