



Costs Decision

Hearing Held on 16 and 17 November 2021

Site visit made on 17 November 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 10/03/2022

Costs application in relation to Appeal Ref: APP/L5240/W/20/3266186 87 & 89 Foxley Lane, Purley, CR8 3HP

- 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 Mantle Developments Ltd for a partial award of costs against the Council of the London Borough of Croydon.
 - The hearing was in connection with an appeal against the refusal of planning permission for the 'demolition of two existing properties and erection of a block of flats comprising of 23 units and five houses to the rear of the site together with parking, bike and refuse/recycling storage'.
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Decision

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

The submissions for Mantle Developments Ltd

2. The application for an award of costs against the Council was made at the hearing. A written statement set out the grounds of the application. The application is for a partial award of costs.

The response by the London Borough of Croydon

3. The response was made in writing by the Council at the hearing.

Reasons

4. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.
5. The PPG provides examples of unreasonable behaviour by local planning authorities. These include substantive matters including a failure by the planning authority to substantiate a stated reason for refusal of planning permission. The applicant also cites a failure of the Council to provide reasonably requested information.
6. With regards to affordable housing, the appellant's viability assessment (VA), dated March 2020, was submitted during the Council's assessment of the application. The VA concluded that it was not viable for the scheme to provide any affordable housing within the proposed development or make any financial affordable housing contribution. An initial review of the VA, dated September 2020, was undertaken by the Council. It concluded that the scheme was

capable of providing 4 units of affordable housing and subsequently, the application was refused on the 13 October 2020.

7. The appeal was started on the 31 December 2020 with the timeline prior to the appeal being commenced showing that the appellant undertook a financial viability assessment update and rebuttal, dated December 2020. Although the decision to refuse planning permission had already been taken by the Council at this stage, the Council undertook a further analysis of the rebuttal evidence.
8. Notwithstanding some continuing areas of disagreement, the Council's viability expert concluded that the scheme could not support the full policy compliant affordable housing provision. It continued by stating that when an appraisal of 100% open market housing was undertaken, this produced a deficit within the scheme. A copy of this report, dated March 2021, accompanied the Council's statement of case, submitted on the 25 March 2021. I accept that there was a crucial difference between the conclusion of the Council's independent viability consultant and the content of the Council's Appeal Statement. Nonetheless, it appears to me that the viability status of the proposed scheme had reached important common ground between the main parties' independent viability consultants by this stage.
9. Although the appellant suggests that a common position on viability was not achieved for some 9 months after the appeal was lodged, I am advised by the applicant that following a series of emails the Council confirmed, as of the 14 June 2021, that they were satisfied that the viability evidence demonstrated there could be no affordable housing contribution via a surplus. An agreed Statement of Common Ground made similar provision and the parties have collaborated in the preparation of the s.106 agreement which would ensure affordable housing provision in the event that the viability position of the scheme were to improve, through early and late stage reviews.
10. Whilst I note there was a gap between the Respondent's Appeal Statement and their confirmation on the 14 June, the evidence of the Respondent's viability consultant was unequivocal, and I am not persuaded that their behaviour was unreasonable. To my mind, the Council's timely approach in responding to the appellant's rebuttal evidence enabled this issue to be appropriately narrowed down.
11. Although the appellant's viability consultant was in attendance at the hearing, the matter in dispute concerned the application of development plan policies rather than the viability of the scheme.
12. Whilst I have found in favour of the Applicant in relation to this reason for refusal, the Respondents' reasoning is based upon a conflict with the development plan, policy SP2.5 of the Croydon Local Plan (2018)(CLP). To my mind, this is the appropriate starting point in decision-making. In reaching my decision, I have exercised a planning judgement and weighed up all matters, in particular, the conflict between development plan policies of the CLP and the more recently adopted London Plan (2021). I have taken a different view on the application of conflicting development plan policies, but I am not satisfied that this demonstrates unreasonable behaviour on the Respondent's part.
13. I appreciate that the outcome of the appeal will have been a disappointment to the applicant, however, following consideration of the appeal on its merits, I

have concurred with the Council's view in respect of heritage and the unjustified loss of trees.

14. In respect of issues of drainage, whilst reaching an agreement on this matter sooner would have been preferable, it would to my mind, have required the same level of input and explanation from the appellant to enable the Lead Local Flood Authority to have removed their objection. As such, I am not persuaded that there has been any wasted expense incurred by the applicant with regards to this issue.
15. Accordingly, I do not consider that unreasonable behaviour has been demonstrated nor that the respondent has caused unnecessary or wasted expense, as described in the Planning Practice Guidance. Therefore, an award of costs is not justified.

E Brownless

INSPECTOR