



## Costs Decision

Site visit made on 9 August 2022

**by R J Redford MTCP MRTPI**

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

**Decision date: 2<sup>nd</sup> September 2022**

### **Costs application in relation to Appeal Ref: APP/L5420/3288773**

#### **24 Coulsdon Court Road, Coulsdon CR5 2LL**

- 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 Macar Developments for a full award of costs against the London Borough of Croydon.
- The appeal was against the refusal of planning permission for the demolition of existing building; erection of a terrace of 6 three/four bedroom houses of two-storeys with roof space accommodation; provision of 6 car parking spaces and refuse storage structures.

### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) 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. Unreasonable behaviour can be considered as either substantive or procedural in nature.
3. The applicant considers that the Council failed to substantiate the stated reason for refusal, going against the recommendation of its planning officer, and not supporting its decision within its Statement of Case at appeal.
4. While the Elected Members of the Council are not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case the planning officer had concluded that the proposal was acceptable and that there was no requirement for affordable housing provision. Yet the Council chose to disregard the advice and refuse. It is evident from the scant information relating to the committee's decision, that the reason for refusal is based on the premise that the site could, at a point in the past, possibly have been developed in conjunction with the adjacent site, and so affordable housing should be provided as part of the proposal before me.
5. The adjacent site's development being very near to completion, if not completed, has permanently rendered the appeal site separate to it and there is no policy mechanism before me which would allow the Council to retrospectively seek affordable housing on the scheme before me in lieu of the adjacent site. Therefore, the Council did not make it clear on what basis affordable housing could be sought or any resulting harm. Moreover, the

Council did not provide any evidence as to why the appellant's reasons for the applications being made separately were unacceptable.

6. It is agreed that a refusal of planning permission does not in itself constitute unreasonable behaviour. However, the parts of the Suburban Design Guide Supplementary Planning Document (2019) relevant in the case do not relate to specific development plan policies and although there is loose parity between the wording of the reason for refusal and the policies cited, it does not constitute a robust policy position.
7. Consequently, I find that the Council have behaved unreasonably by not demonstrating on planning grounds why the proposal is unacceptable, and by failing to properly justify its reason for refusal. This demonstration of unreasonable behaviour has resulted in unnecessary or wasted expense, as described in the PPG, and therefore a full award of costs is 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 London Borough of Croydon shall pay to Macar Developments, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to 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.

*RJ Redford*

INSPECTOR