



Costs Decision

Site visit made on 25 August 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29/09/2022

Costs application in relation to Appeal Ref: APP/L5240/W/21/3283863 Garages Rear of 42-50 Chipstead Avenue, Thornton Heath CR7 7DG

- 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 Chipstead Garages Ltd for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of planning permission for the demolition of 10 existing lock up garages and erection of 4 part two storey, part three storey detached houses (1no. 1 bed/2 person, 1no. 2 bed/3 person, 2no. 3 bed/4 person) with associated hard and soft landscaping, boundary treatments, bicycle and bin storage.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the 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 in the appeal process.
3. The PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. Although costs cannot be claimed for the period during the determination of the planning application, the Guidance confirms that costs applications may relate to events before the appeal. It goes on to say that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
5. It is understandable that the applicant, following a favourable recommendation by Officers and positive pre-application discussions, may feel aggrieved with the outcome of the application. The Council or its officers are not, however, bound by any prior events, and it remains in the gift of the Planning Committee to give a different view to its officers. This does therefore not amount to unreasonable behaviour.

6. The reason for refusal as set out in the Council's decision notice is complete, precise, specific and relevant to the application. It also clearly states the policies of the Croydon Local Plan and The London Plan that the Council considered the proposal would conflict with. These reasons have been adequately substantiated by the Council in its appeal statement which demonstrates how they considered the proposal would be harmful to the living conditions of the occupants of surrounding properties with regard to outlook. I therefore do not consider that the Council acted unreasonably in refusing planning permission for this reason. The Council exercised its planning judgement in coming to this decision.
7. The applicant has referred to what they perceive to be the failure of the Council to follow its Development Management Advice Note 5 – How does the Council decide planning applications and Planning Sub Committee Procedure Rules Part 4K. They have also set out how they consider the procedure followed was contrary to Probity in Planning.
8. I have not been provided with copies of the above documents to give them full weight in the application, nor am I aware of the status of these documents. The applicant considers that the application should have been returned to the planning committee for decision following its deferral. I do not find it unreasonable that following the deferral of the application, it was proceeded to be determined under delegated powers. There is no evidence to suggest that the Council breached its scheme of delegation. The Council have explained that following the deferral, the recommendation for refusal did not trigger the requirement for the application to be heard by the planning committee.
9. The applicant suggests that they were 'forced' into redesigning the scheme and this was beyond the powers of the planning committee. From my consideration of the evidence, members appear to have indicated where they saw harm with the proposed development, and that removal of this element may overcome the harm, however this does not amount to 'forcing' amendments. The mere fact that the appeal proposal is the scheme as initially submitted demonstrates that the applicant was not forced to make amendments. The evidence suggests that the timeframe between the committee meeting and the decision provided reasonable opportunity for the applicant to amend the scheme if they wished. Therefore, this does not amount to unreasonable behaviour.
10. The applicant claims that the Council acted unreasonably in so far that they have not determined similar cases, namely the appeal proposal and those at 30-32 Chipstead Avenue and Cheriton House, in a consistent manner. As I have found significant harm would be caused by the appeal proposal, I do not consider that refusing the application for the reason given, amounts to unreasonable behaviour. The Council had regard to the other decisions in their assessment. Furthermore, these developments are on different sites, different proposals, and were determined prior to the introduction of the current National Planning Policy Framework, The London Plan, and, in relation to Cheriton House, the current Local Plan. It is therefore not unreasonable that a different decision was made.
11. The applicant has set out their costs claim with reference to Circular 03/2009 Department for Communities and Local Government (2009) Cost Awards in Appeals and Other Planning Procedures, and Department for Communities and Local Government (2009) Cost Awards in Planning Appeals (England). This

circular and guidance were cancelled on the introduction of the PPG. I have considered the application against the relevant sections of the PPG.

12. The PPG further outlines that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. Where they have refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.
13. The evidence suggests that some of the Council's handling of the procedural elements of the application may not in certain circumstances have fully aligned with their internal advice note. I do not, however, find that the chain of events as put forward amounts to unreasonable behaviour. Furthermore, it is not unreasonable that the formal decision of the Council is different to what the applicant had anticipated whether this be taken by the planning committee or under delegated powers.
14. As a result, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense. I find nothing to suggest that a decision was not reached on the basis of the planning merits of the development.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated. Therefore, a full award of costs is not justified.

A M Nilsson

INSPECTOR