



Costs Decisions

Site visit made on 2 November 2022

by R J Redford MTCP MRTPI

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

Decision date: 05 DECEMBER 2022

Costs application in relation to Appeal Ref: APP/L5240/W/22/3298553 Hallinwood Bungalow, 46 Quail Gardens, South Croydon CR2 8TF

- 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 Matthew Arnold of The Oak Group for a partial 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 existing property and the erection of 8no. terraced dwellings with shared access from Quail Gardens, along with amenity space, drainage, infrastructure and other associated works.
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Decision

1. The application for a partial award of costs is refused.

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 has behaved unreasonably by including reasons 3, 4 and 5 on the decision notice, then withdrawing them during the appeal. Substantively the applicant does not consider that the Council properly evidenced their inclusion and failed to apply relevant planning policies. Procedurally they consider the Council should have dealt with the application differently and allowed them an opportunity to address the matters in question through the application process before determining the application.
4. From the evidence before me the Council's assessment was based on a thorough understanding of the site, its surroundings including the adjacent approved scheme, and the information submitted during the application. Within the officer report, why each of the 3 reasons were applied is set out, and the decision notice, in line with section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, cites relevant development plan policies in accordance with each reason. On receipt of the additional information submitted by the applicant at appeal, the Council was able to reassess its position considering reasons 3, 4 and 5 and clearly stated why it no longer wished to defend them.
5. It is appreciated that the Council could have requested the additional information during the application process. However, as both parties have

- stated, the application was submitted after in-depth pre-application discussions. It is not, therefore, beyond the realms of reasonable behaviour for the Council to consider that the appellant had submitted all they intended to submit at the application stage and so dealt with it accordingly.
6. The Council's poor financial state and lack of staff is noted. This, however, does not change the fact that there is an expectation for the Council as a local planning authority to be proactive. Nevertheless, in this instance, the issuing of pre-application advice, and the email exchanges prior and post the decision being made, do show a level of communication which provided the applicant opportunity to understand how the application was likely to be decided and potential issues.
 7. The applicant states that the Council's Tree Officer had contradicted their own advice. This resulted in the inclusion of reason 4 on the decision notice, and the issuing of a separate consent to fell the tree in question. Nonetheless the Council was valid in stating within reason 4 that the information pertaining to the proposal before them did not sufficiently demonstrate the loss of said tree.
 8. The information that demonstrated the loss of the tree as being acceptable was submitted with the consent application and related to the existing building on the appeal site. There is nothing before me showing the same information was also submitted in relation to the appealed scheme. Equally as the appealed scheme would require the demolition of the existing dwelling, the impact of the tree on that property would not be relevant. As such, the potential blurring of the Tree Officer's advice and the lack of coordination between the planning application and tree consent was ungainly, but in the balance of probabilities was likely to relate to the staffing issues rather than wanton misdirection.
 9. The applicant submitted 3 appeal decisions as evidence that the sustainable highway contributions requirements, set out in reason 5, were unreasonable. The 3 decisions all relate to sites on Welcomes Road, Kenley, which is some distance from the appeal site. Although in all 3 cases it was found the contributions were not required, my colleagues' decisions were very specific to the location and information before them. They did not at any stage assert that such a contribution is unacceptable throughout the borough. The Council has, in this case, substantiated its position with reference to relevant policy, and had alerted the applicant to the potential of such requirements at pre-application stage.
 10. The applicant states the Council did not react to additional information submitted at the application stage. However, they do not elaborate on what information was not considered nor how this detrimentally effected the application to such a level as to constitute unreasonable behaviour.
 11. Although the Council has ultimately chosen not to defend reasons 3, 4 and 5, its original position to include them within the decision notice was a matter of planning judgement on the information available to its officers at time, and those reasons were fairly substantiated by policy. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

R J Redford

INSPECTOR