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## Costs Decision

Site visit made on 5 October 2022

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 DECEMBER 2022**

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### **Costs application in relation to Appeal Ref: APP/L5240/W/21/3280810 Garages Rear of 31-49 Elmfield Way, Elmfield Way, South Croydon CR2 0EJ**

- 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 Daejan Investments Ltd for a full award of costs against the Council of the London Borough of Croydon.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing garages and redevelopment of the site to provide 8no. semi-detached dwellings and 1no. detached dwelling, provision of improved vehicular and pedestrian access, vehicle and cycle parking, landscaping and refuse storage areas.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance 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.
3. The appellant's claim for costs has been sent to the Council, although the Council has not provided a response. However, I consider that I have sufficient evidence on which to reach a decision.
4. The appeal was submitted against the failure of the Council to give notice within the prescribed period of a decision on the application for planning permission. In its Appeal Statement the Council has indicated that it would have refused planning permission and the reasons for this.
5. The appellant has applied for costs on the grounds that the Council would have refused planning permission for a development which should clearly be permitted, or that the grounds for refusal could have been addressed by condition.
6. The Council's first indicative reason for refusal is based on the design of the development, which I have assessed on the basis of character and appearance. Consideration of design is a subjective issue which is a matter of planning judgement. Although I have allowed the appeal, this was with regard to the self-contained nature of the site and I have accepted that some elements of the proposal are not representative of the surrounding area. Furthermore, I

have also concluded that the alternative design proposed by the appellant goes beyond what could be considered a minor amendment. On that basis, the Council's concerns on design are not so without foundation that they represent unreasonable behaviour, and I do not consider that this is a matter that could be addressed by condition. The Council has therefore not behaved unreasonably on this ground.

7. The Council's second indicative reason for refusal relates to the under-provision of car parking. However, I have concluded that there is space available within the site to enable the provision of suitable car parking spaces, and that this can be secured by condition. I am also mindful that the appellant's proposals in relation to car parking were in response to contradictory information received from the Council. The contradictory and dilatory response on the Council on this matter represents unreasonable behaviour, and the appellant has been put to unnecessary expense to address this through the appeal process.
8. The third indicative reason for refusal refers to a lack of detail in respect of vehicle tracking diagrams. However, the appellant has provided details which demonstrate that suitable vehicle tracking can be achieved. Any outstanding evidence on this matter can be addressed by condition. Had the Council taken a more proactive and timely approach on this matter then this could have been resolved as part of the application process or by condition, rather than the submission of an appeal to determine the Council's concerns on this issue.
9. The fourth reason for refusal relates to an access route to the rear of the site, and I have concluded that concerns in respect of public safety could be addressed by condition. However, I have also concluded that this access is not ideal with regards to public safety. On that basis, the Council's concerns are not so unsubstantiated or without foundation as to represent unreasonable behaviour.
10. Notwithstanding my conclusions in respect of the first and fourth indicative reasons for refusal, I consider that the second and third indicative reasons could be addressed by condition or could have been addressed in the application process had the Council responded in an appropriate and timely manner. In respect of those reasons, the appellant has taken a proactive approach in attempting to address those issues, and the Council's behaviour is unreasonable in that it represents an unacceptable delay in providing information or other failure to adhere to deadlines. Indeed, the lack of a decision on the application means that the appellant has had to submit an appeal to identify and clarify the Council's concerns.
11. The appellant has provided the Council with ample opportunity to progress the planning application, and on that basis I consider that the appeal was not submitted prematurely. The Council's failure to reach a decision on the application and providing substantive and timely reasons for this represents unreasonable behaviour which has led to the appellant incurring unnecessary expense in progressing this appeal. On that basis, I consider that an award of costs is justified, with the exception of costs incurred in addressing the first (character and appearance) and the fourth (pedestrian access route to rear) indicative reasons for refusal.

### **Costs Order**

12. 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 Council of the London Borough of Croydon shall pay to Daejan Investments Ltd the costs of the appeal proceedings described in the heading of this decision, except for the costs incurred in addressing the first (character and appearance) and fourth (pedestrian access route to rear) indicative reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*David Cross*

INSPECTOR