



Costs Decision

Site visit made on 18 October 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2022

Costs application in relation to Appeal Ref: APP/P5870/W/21/3289262

- 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 Shaun Agutter (Hillside Motors Ltd) for a full award of costs against the Council of the London Borough of Sutton.
 - The appeal was against the refusal of planning permission for demolition of 292-300 Carshalton Road and redevelopment by a 3-storey building to provide nine self-contained residential flats (Class C3), cycle and car parking, landscaping and incidental works.
-

Decision

1. The application for an 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. The application is for full costs on both Procedural and Substantive grounds.
3. The Council's approach was to defend the loss of commercial uses in the local centre and also to prevent the addition of non-active frontages. On a straightforward reading of Policy 18, the scheme is contrary to part (a). That the Council chose to defend this policy is not unreasonable.
4. I have concluded that as part (f) of the Policy was not applicable in this instance marketing information was unnecessary to support the proposal. However, no marketing information was provided as part of the appeal and so no additional expense was incurred in this respect.
5. I reached a different conclusion to the Council on the extent to which the redevelopment of the appeal site would affect the overall objectives of the policy and the likely harm which would result. I was helped in reaching my overall decision by the evidence put forward by the applicant. Thus, it was neither wasted nor unnecessary.
6. Although I have not found the building's overall design and appearance to be unacceptable, the proposed building represents an increased size and bulk of built form on a prominent corner plot. The design is not without some aspects that are visually challenging. Some of the concerns raised by the Council were matters that I too highlighted.

7. I do not therefore find that the Council's concerns were entirely without merit. That they chose to place more weight on the more challenging aspects of the design than did I in my overall balance, does not amount to unreasonable behaviour.
8. Furthermore, I do not find the absence of reference in the Officer Report (OR) to No.185 Carshalton Road being locally listed to be unreasonable. An OR report does not need to address every issue that is not relevant to the decision. The Council did not subsequently make reference to it in defending their decision. Such actions are not therefore unreasonable.
9. There is nothing to suggest that the submitted Transport Statement (TS) and Planning, Heritage and Impact Statements (PHIS) were ignored by the Council with regard to the issue of the access to the site. On the contrary, I note that the parking survey results within the TS were specifically referenced in the Officer Report. Furthermore, both documents were specifically listed in the informative noting that the decision had been assessed in accordance with these reports. It is commonly accepted practice that the main body of a report does not need to make reference to every document submitted in support of a proposal or repeat its contents.
10. The advice of the Highways Officer was sought, and TfL were consulted. That TfL did not object does not obviate the need for the Council as Local Planning Authority to consider the advice of the Highways Officer. The decision was based on the advice that was received. Given the evidence before me and my own observations I have agreed with the conclusions in relation to the width of the access road.
11. As the Council had a fundamental concern with the principle of the development at the time the application was being considered they chose not to pursue a redesigned access. I do not view the Council's approach as being unreasonable in such circumstances.
12. Whilst the Council's concerns regarding the neighbouring trees were not conveyed to the appellant during the course of the application it seems that the pre-application advice was clear on the need to provide such information. If an applicant fails to take on board such advice and does not provide the information, then it is not unreasonable for the Council to subsequently refuse the application due to the absence of the requested details.
13. Similarly, the applicant would have been aware from Policy 32 of what drainage information the Council usually required for previously developed sites. This applies to all development, not just major development. That the appellant chose to submit less information was their choice. Whilst the Council's lack of response to the agent's email of 4 November 2021 was unhelpful, the applicant was clearly aware of the concerns raised by the Council's sustainability officer and the policy requirements. Whilst I accept that the provision of this information would not have prevented a refusal on other grounds, it was open to the applicant to submit further information to address this particular issue.
14. Whilst I concluded that on balance the matters of trees and drainage could have been addressed by conditions, it does not alter the fact that the applicant chose not to comply with the pre-application advice or the policy requirements and did not supply the details. In these circumstances I am unable to conclude that the Council acted unreasonably.

15. The Framework notes that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. It goes on to confirm that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.
16. The OR did not reference the London Plan in relation to design but the document is referenced within the report as a whole, including reference to housing delivery. It is generally accepted that an OR does not need to be examined forensically or that there needs to be comment on all policies or guidance, especially where there is not considered to be conflict.
17. Whilst the OR does not include a specific balancing exercise or conclusion, it is clear from a simple reading of the report that the Council identified several concerns which it considered were contrary to the development plan, taken as a whole. It seems self-evident that the Council placed greater weight on these concerns than the uplift in residential units on the site, particularly given the 5-year housing land supply position and that Paragraph 11(d) of the Framework was not engaged.
18. There is nothing before me to suggest that if a final conclusion had been written, or that if there were an additional assessment in relation to London Plan policies, a different decision would have resulted.
19. Taking the above into account, I am satisfied that the Council's decision stands up to scrutiny. It is the right, and indeed choice, of any applicant whether and when to appeal a decision and take on the costs that it involves.
20. Overall, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified in this case.

Stewart Glassar

INSPECTOR