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## Costs Decision

Site visit made on 6 April 2023

**by R Bartlett PGDip URP MRTPI**

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

**Decision date: 19 May 2023**

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### **Costs application in relation to Appeal Ref: APP/L5240/W/22/3302745 580-582 Wickham Road, Croydon CR0 8DN**

- 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 the Council of the London Borough of Croydon for a full award of costs against Helvadere Ltd.
  - The appeal was against the refusal of the Council grant subject to conditions planning permission for replacement of the existing external seating area to the front with a new pergola with retractable roof.
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### **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.
3. The Council claim that the appellant behaved unreasonably by submitting an application that was not in line with their pre-application advice, and that failed to address concerns raised in previous application and appeal decisions.
4. The email correspondence submitted with the costs claim, demonstrates that the appellant frequently sought advice and assistance from the Council, in an attempt to find an appropriate solution that would help to secure the future viability of their business and would also address the Council's concerns.
5. The Council encouraged the appellant to enter into pre-application discussions, in which it advised the appellant to find a solution that would not involve development requiring planning permission, for example the use of a temporary form of shelter that would be considered a chattel. The appellant was perfectly entitled to reach the view that this was not the best solution for their business or customers of it. Instead, the appellant submitted an alternative application for an open sided free-standing structure with a retractable awning, smaller than the previously refused extensions.
6. The PPG states that an appellant may be at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. This may occur when the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same site where an Inspector

decided that the proposal was unacceptable and material circumstances have not materially changed.

7. Having found an alternative solution, which the appellant considered would meet their business needs and address the previous concerns raised, it was perfectly reasonable for them to appeal against the refusal of the latest and most up-to-date plans, particularly given the professional advice they had received. In this regard I note that the Council, in its email dated 22 November 2022 to the appellant's agent, did suggest that advice be sought from a planning professional as opposed to an architect. Having paid for such advice, it was not unreasonable of the appellant to use this to defend their case at appeal, simply because the Council did not agree with it.
8. The revised proposal was materially different to the previous extensions that had been refused planning permission and had been dismissed at appeal. Accordingly, there was no reason to assume that this appeal would not be successful due to those previous appeal decisions. Given that I have allowed the appeal, the proposal clearly wasn't unreasonable on its merits.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*R Bartlett*

INSPECTOR