



Costs Decision

Hearing (Virtual) held on 16 May 2023

Site visit made on 17 May 2023

by **H Miles BA(hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th June 2023

Costs application in relation to Appeal Ref: APP/L5240/W/23/3316205 30 Russell Hill, Purley CR8 2JA

- 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 S Sabet for a full award of costs against London Borough of Croydon.
 - The appeal was against the refusal of planning permission for demolition of former drug and alcohol rehabilitation residential care home (Use Class C2) and erection of 2 no apartment blocks totalling 24 no one, two and three bedroom flats (use class C3) (including affordable housing), comprising block A: four-storey building including semi basement and roof accommodation containing 18 no flats and block B: three-storey building with semi basement containing 6 no flats. Construction of bin and garden stores, alterations to ground levels and installation of surface water drainage infrastructure. Formation of new vehicular and pedestrian accesses onto Russell Hill. Lay out of associated hard and soft landscaping, including new private driveway, pedestrian paths and terraces, gardens and children's play equipment.
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Decision

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

The submissions

2. The appellant's case was made in writing. The Council's response was made orally at the hearing, and the appellant made some further points orally as well. Details of the oral submissions are set out in the Annexe at the end of this decision.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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.
4. The substantive points in the appellant's case are that the Council has failed to substantiate each reason for refusal at appeal and has made vague generalised or inaccurate assertions about a proposal's impact, unsupported by an objective analysis. As well as that it has prevented or delayed development which should clearly be permitted.
5. The Council has provided a detailed appeal statement. It covers critical analysis of the design and provides a sufficiently thorough consideration as to the Council's view on the harm that would occur to character and appearance. This suitably substantiates the reason for refusal at appeal.

6. The Council had concerns regarding the daylight and ventilation to some of the units at the time that the decision was made. The Officer's report explains that these were based on detailed evidence before them at that time and I do not find them to be inaccurate. Revised plans were submitted during the appeal scheme which addressed these concerns. However, this information was not before the Council at the time it made its decision. As such without this additional detail, the Council could not be satisfied that these issues could be addressed with minor changes which could be secured by condition. Therefore it was not unreasonable to refuse the development for this reason.
7. In terms of outlook, the Council's Statement of Case addresses the specific points of concern and suitably substantiates this reason for refusal at appeal. The Council further explained their position at the hearing that along with the height of the retaining wall the surrounding built development was a concern at unit 20. As such it was not unreasonable of them to maintain this view even after revised plans were accepted.
8. During the determination of the application the appellant was advised (in an email dated March 2022) that the application was being targeted for approval and no concerns regarding living conditions or character and appearance were raised. However, in a subsequent email (August 2022) the appellant was advised that the scheme was no longer supported. It is put to me by the Council that this was due to a number a policy changes during the application process including the adoption of the revised National Planning Policy Framework (July 2021) and London Plan (March 2021), the revocation of the Suburban Design Guide SPD (2019) (SPD2) (in July 2022) along with a review by senior officers.
9. I appreciate the appellant's frustration in this regard, particularly given the pre application engagement that occurred. Nevertheless, discussions prior to the determination of the decision are advisory and it is not binding on the Council to make a particular decision.
10. I have been provided with correspondence associated with the early positive steer by officers as part of the evidence and I have taken this into account in my decision. However, in this case it can be seen that I nevertheless find some harm to character and appearance. As such, any judgement on this scheme is balanced and even in light of the correspondence prior to determination, I do not find that the proposal is development which should clearly be permitted.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

H Miles

INSPECTOR

Documents

Appellant's Costs Application

Annexe: Submissions made orally at the hearing

The submissions for London Borough of Croydon

The response was made orally at the hearing. The following additional points were made orally:

There are a few areas to respond to. The first is around the officer dialogue with the appellant in the lead up to trying to get the item to a committee meeting.

Last year there was an email dialogue between the officers and agent targeting a particular planning committee. Its common that a scheme has not been reviewed by a senior officer at the time we are targeting a particular committee and clearly emails from officers are not the formal decision of the council. This follows after. Officers come to their view and then discuss that position with their manager before sign off and that is ultimately the decision of the LPA. That is the final decision. Its not just about the SPD2 revocation. The officer recommendation to try and get it to committee was changed. But the SPD was guidance, as a material consideration it wasn't part of the development plan and its sits alongside DM10. Everyone should be alive to the fact that it pushed intensification of the suburbs on sites like this. In particular schemes of under 25 units and this scheme is 24 units. For example, it encouraged height beyond what DM10.1 says, beyond 3 storeys and it actively encouraged amalgamation of sites to get bigger development to come forward and it pushed the envelope in terms of optimisation of sites. It set dimensions between properties that were lower than the 18-20m yardstick used across London, so reverting back to DM10 is a slightly more sensitive approach in terms of the character of the area than with the SPD.

The London plan was adopted in March 2021, the application was submitted in January 2021 and pre application discussion was in advance of that. It sets a high bar in terms of design quality. The NPPF was updated in July 2021 pushing for beauty and good design. The decision was based on a combination of those. There was a rationale of targeting a particular committee but once it came to be signed off by an officer it didn't go to that committee.

Point 1 design – it can be challenging in a hybrid world. We've provided a Statement of Case, written submissions of where we have concerns with the design of the scheme. The team have appeared to give our position and we've been clear about where design concerns are. This is enshrined in policy which requires high quality design, we've given robust evidence and that was in written form as well.

In terms of outlook, and the point that daylight and sunlight could have been agreed by condition. I struggle to see how we could accept a condition if we didn't know that the outcome would have been positive so I don't see how we could accept that as a condition – this information is needed at the design stage.

Outlook from those units is suboptimal, shown in sections. Light and outlook are separate and distinct, these are different and it's a fair position to come to. I struggle to understand how this section we were presented with last night, how

we've gone from a 1.8m retaining wall to a 1.3m retaining wall. There would be unacceptable future occupier amenity in terms of outlook.

Final comments for Mr S Sabet

The response was made orally at the hearing. The following additional points were made orally:

First point – The revocation of the SPD was in July 2022. And we have seen the email from the council officer. The email from the council officer was supportive of the scheme in March 2022. So everything up until July 2022 and the revocation of the SPD had led to officer support for the scheme in the context of the NPPF, NPPG and national design guide calling for high quality design. With respect, there really isn't any credible basis that something that was high quality design in the view of officers could be seen to be poor quality design simply by taking out the SPD. Because the SPD's purpose was to secure the proper implementation of DM10, not to change it. It was supportive of DM10. DM10 is absolutely clear that the design guidance was consistent with it. For example in DM10 it talks about a minimum of 3 storey heights and that's what the design guide talked about. It simply isn't credible to say a scheme that had been signed off by officers as high quality design would change with the revocation of the SPD. The council really hasn't been able to explain what it is that changed and that is unreasonable.

It isn't a question of 'we've set out our position', your judgment has to be whether those concerns were detailed, substantive or whether they were vague and generalised and with respect they fall into that second camp and are unreasonable.

In relation to outlook we are at 1.3m at unit 20 and with that in place and with a well lit flat you can't credibly say that this has an unreasonable outlook. To suggest that the wall is in some way dominating is just not acceptable. Unit 19 is well lit and plants, tables and chairs could be provided. Once you've got rid of design there is no way the council could have credibly held up outlook as a credible objection to this scheme and a full award is justified.