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## Costs Decision

Site visit made on 24 July 2023

**by J E Jolly BA (Hons) MA MSc MCIH MRTPI**

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

**Decision date: 28 July 2023**

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### **Costs application in relation to Appeal Ref: APP/Q3820/W/22/3301159 90-92 High Street, West Green, Crawley RH10 1BP**

- 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 Commercial Properties for a full award of costs against Crawley Borough Council.
  - The appeal was against the refusal of the Council to grant planning permission for a change of use from offices (B1a) to 15 No residential flats (C3).
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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. Costs may be awarded to any party regardless of the outcome of the appeal.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as providing information that is shown to be manifestly untrue or inaccurate, or deliberately concealing relevant evidence, and substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations or fails to provide evidence to substantiate the reasons for refusal.
4. The applicant believes that the local planning authority acted unreasonably on the basis that it prevented development that ought to have been approved having regard to the General Permitted Development Order (England) 2015 (as amended) (the 'GPDO') through its inconsistency related to the 'agent of change' principles applied to the proposal.
5. The applicant suggests that the 'agent of change' principles would be met through the inclusion of upgraded windows and a mechanical ventilation system in the former office building. In the applicant's opinion this would alleviate the impact of noise and disturbance associated with the nearby commercial entertainment venues on the future occupiers of the dwellings and in turn the potential impact on Crawley's night-time economy.

6. The applicant also highlights that this form of mitigation was found to be acceptable on other schemes in the Borough, including the permitted conversion of the nearby 'Traders Market' site<sup>1</sup> to the south, and the 'TSB' site in Crawley that made use of mechanical ventilation in mitigation of noise. As such, the applicant contends that the local planning authority failed to provide substantiated reasons why the proposed mitigation would be unacceptable for the development, and hence has been inconsistent in its decision making.
7. In response, the Council believes that its Environmental Health Officer provided detailed evidence as to why the scheme was found to be unsuitable on noise grounds due to its proximity to numerous late-night entertainment venues. The local planning authority also contend that its position is strengthened by Policy ENV11 of the Crawley Borough Local Plan 2015, (CLP) which deals with matters of noise and therefore, is a planning consideration. Furthermore, the schemes that the applicant refers to above were granted planning permission before the CLP was adopted and the 'agent of change' principle introduced. The local planning authority also highlights, previous appeal schemes on the High Street that included 'agent of change' principles which it has successfully defended on noise grounds<sup>2</sup>. In addition, the local authority has also provided an example of an application<sup>3</sup> that it refused on similar grounds to the proposal before me and therefore, refutes inconsistency.
8. To my mind, the local planning authority reasonably considered the scheme on its own planning merits, and whilst the prior approval application was not determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004, Policy ENV 11 of the Crawley Local Plan, 2015 (CLP) remains relevant to the planning judgement. Indeed, in my decision I did not find it an unreasonable approach of the local planning authority to conclude that the keeping of windows shut could create an oppressive environment and therefore harm the living conditions of future occupiers, or that it would have an impact the night-time economy. Moreover, while similar mitigation might be acceptable to the local planning authority on schemes elsewhere in the Borough, I do not concur that it has been inconsistent in its determination given the particular circumstances of the case, which includes very close proximity to late-night venues. Therefore, the Council did not prevent development that should have been permitted. Whilst I appreciate that the applicant does not agree with the outcome of the planning application, the Council did not behave unreasonably.
9. The PPG is clear that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. Indeed, there should generally be no grounds for an award of costs against the local planning authority for a reasonable refusal of an application. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated and the application for an award of costs must fail.

*J E JOLLY*

INSPECTOR

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<sup>1</sup> CR/2016/0596/FUL

<sup>2</sup> APP/Q3820/W/18/3199581 and APP/Q3820/W/19/3237681

<sup>3</sup> APP/Q3820/W/19/3243637