



Costs Decision

Site visit made on 28 August 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2023

Costs application in relation to Appeal Ref: APP/L5240/W/23/3318858 211 Wickham Road, Croydon CR0 8TG

- 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 Amsons – Amsons Partners Ltd for a full award of costs against London Borough of Croydon.
 - The appeal was against a refusal to grant outline planning permission for development described as 'demolishing of ancillary storage outbuilding area attached to the shop situated at the rear garden of 211 Wickham Road CR0 8TG and the erection of a detached building consisting of 1 No, three-bedroom 4-Person self-contained unit and 3 Nos, 1-bedroom, 1-Person self-contained unit'.
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Decision

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

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 PPG provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include where a local planning authority does not determine similar cases in a consistent manner.
4. With regards to the first reason for refusal on the Council's decision notice, the effect of the proposal on the character and appearance of the area is a subjective matter. I have reached a different conclusion to the Council on that particular matter. Even so, the Council was entitled to reach its own conclusion and provided detailed reasoning as to why it considered the inclusion of recessed balconies would be harmful within its Officer report.
5. However, the Council has acted inconsistently in refusing the proposal due to concerns in respect of a lack of compliance with the development plan requirements for communal outdoor amenity space, play space and cycle and waste storage facilities. This is because it did not have these concerns when considering the previous scheme on the site for a similar development¹.
6. The Council suggests that the previous scheme had a different layout. However, it is clear from the officer report relating to that scheme that there were similar proposals for dedicated garden space for the ground floor flats

¹ LPA Ref 21/00222/FUL / Appeal Ref APP/L5240/W/21/3279454

only and that only one of the ground floor flats would have access to play space. Therefore, it is not clear why the absence of communal space and play space to serve all properties in the flatted development, in line with the requirements of the development plan, was not raised as a concern in that instance.

7. Furthermore, in considering the previous scheme, the Council indicated that a condition to finalise details of cycle and waste storage would be appropriate. However, the Council has not sought to explain in any detail why it reached different findings in respect of the application which led to this appeal.
8. My findings in respect of the above matters are particularly pertinent as the same development plan requirements would have been in place when the Council determined the application for the previous scheme. In determining the previous appeal, the Inspector came to no findings in respect of whether or not that development would meet the development plan requirements relating to communal outdoor amenity space, play space and cycle, refuse and recycling storage facilities. This is presumably because they were not matters in dispute that required resolution and, because the appeal was dismissed for other reasons, the Inspector did not need to reach findings on them.
9. Had the Council properly considered the first application then it would not have needed to act in an inconsistent way when considering the second. The Council were correct to refuse the second application because for the reasons set out in my appeal decision it would be harmful. However, in so doing it acted inconsistently and thus unreasonably. This left the appellant in a very difficult and unclear position. Had the Council acted in a more consistent manner throughout the two applications then it's likely the appellant would have had adequate clarity. Consequently, the matters of dispute for the second appeal, and the costs associated with them may have been reduced.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the second and third reasons for refusal on the Council's decision notice. For that reason, a full award of costs is justified in respect of those matters.

Costs Order

11. 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 London Borough of Croydon shall pay to Mr S Amsons – Amsons Partners Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of contesting the second and third reasons on the Council's decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to London Borough of Croydon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Russell INSPECTOR