



Costs Decision

Site visit made on 30 May 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Costs application in relation to Appeal Ref: APP/L5240/W/22/3312631 18 Brambledown Road, South Croydon CR2 0BL

- 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 J Carvall of Carvall Homes Ltd for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of a three storey building with roof accommodation comprising 7 flats, provision of new access and crossover, 4 parking spaces, refuse store, cycle parking and landscaping.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 cannot be claimed for the period during the determination of a planning application. However, behaviour and actions at the time of a planning application can be taken into account in consideration of whether or not costs should be awarded¹.
3. In summary, the appeal site was the subject of a previously refused scheme². The applicant contends that the Council made no objection to the overall scale, massing, layout or appearance of that scheme, save for the concern raised regarding the amenities of a neighbouring property. Subsequently, the applicant submitted a revised scheme³ which sought to overcome the previous reasons for refusal, which is the subject of the appeal before me.
4. The officer report to the Planning Committee recommended approval subject to conditions and a legal agreement to secure contributions for sustainable transport improvements and enhancements. The committee refused the application. The sole reason for refusal set out that due to its excessive footprint, height, bulk and massing, the proposal would represent overdevelopment of the site, thus failing to respect the scale, height, density

¹ Paragraph: 028 Reference ID: 16-028-20140306 - Revision date: 06 03 2014

² Planning Application Ref 20/06470/FUL

³ Planning Application Ref 21/04705/FUL

and massing of the local area. Thus, the Council's reason for refusal relates to matters of character and appearance.

5. The applicant draws my attention to the differences between the two schemes. In this regard, the proposals were of the same height, but the revised scheme was of a smaller footprint, with a modified rear projection to address the amenity concerns with regard to the neighbouring property. The applicant argues that in the absence of any change in material circumstances, the applicant was entitled to consider that permission would be granted given that the previous reasons for refusal were overcome. The applicant contends that the Council failed to exercise their duty to determine the planning application in a reasonable manner having regard for the reasons for refusal the Council gave for the first scheme, and thus the applicant has incurred unnecessary expense in making the appeal. The claim is made on substantive grounds only.
6. PPG advises that where local planning authorities have exercised their duty to determine a planning application in a reasonable manner, they should not be liable for an award of costs. Where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application⁴.
7. The Council's response to the claim does not dispute the facts as put forward by the applicant. Although the applicant does not seek a claim on procedural grounds, the Council sets out the reasons for the planning application being referred to the Planning Committee, rather than being decided under delegated powers. I am satisfied that the Council acted in accordance with its constitution in this regard.
8. I agree with the Council that Members of a Planning Committee are not duty bound to follow the recommendations and/or advice of their professional officers, and thus a different decision to that recommended is not unreasonable behaviour of itself. While matters such as the assessment of the impact of a proposal upon the character of an area to some extent is subjective, decisions must also have regard to matters of consistency.
9. The officer report clearly refers to the development plan, national policy and any other material considerations, including the previously refused application. However, the officer report clearly sets out at paragraph 8.11 that the previous application was refused on character grounds because of the excessive amount of hardstanding proposed at the rear and it further details how this has been addressed. Therefore, it was clear that the previous character reason for refusal had been overcome, and the committee was thus aware of that position.
10. The minutes of the Planning Committee show that there were speakers for and against the proposal, that the committee deliberated upon the application, and a reason for refusal was clearly articulated at the meeting. The Council has provided a statement of case to the appeal with objective analysis to support the reason for refusal.

⁴ Paragraph: 028 Reference ID: 16-028-20140306 - Revision date: 06 03 2014

11. The Council draws my attention to a material change in circumstances since the refusal of the first scheme, whereby a Supplementary Planning Document: *Surburban Design Guide* (SPD) was revoked prior to the consideration of the revised scheme. The Council states that the SPD provided guidance on intensification and design and was relevant to the site. There is no mention of the revocation of the SPD within the officer report, nor in the minutes of the committee. Moreover, the Council has not provided compelling evidence to explain how the revocation of the SPD impacted upon the decision to refuse the revised scheme.
12. Taking all of the above into account, I find that the Council was not consistent with its previous decision making for the appeal site, and thus the Council has behaved unreasonably by not determining similar cases in a consistent manner, with regard to the previous scheme. Such a finding accords with the examples of unreasonable behaviour by a local planning authority that may give rise to a substantive award, as set out in PPG⁵.
13. I note that the reason for refusal did not address whether the revised scheme made adequate provision for sustainable transport improvements and enhancements, and this matter is addressed in my appeal decision. The applicant submitted a unilateral undertaking (UU) during the appeal. In my judgement, even if the application were to have been approved by the committee, a legal agreement would still have been necessary. Therefore, the costs incurred by the applicant in regard to the UU should be excluded from any award.
14. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred, and a partial award of costs is therefore warranted.

Costs Order

15. 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 the Council of the London Borough of Croydon shall pay to Mr J Carvall of Carvall Homes Ltd, the costs of the appeal proceedings described in the heading of this decision, excluding those incurred in the preparation of the unilateral undertaking; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to the Council of the 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.

J Moore

INSPECTOR

⁵ Paragraph: 049 Reference ID: 16-049-20140306 - Revision date: 06 03 2014