



Costs Decision

Site visit made on 13th October 2023

by Megan Thomas K.C. Barrister-at-Law

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 07 November 2023.

Costs Decision in relation to Appeal Ref: APP/L5240/W/23/3324737 Land at Walden, 128 Coombe Lane, Croydon CR0 5RF

- 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 Albino Serrao Alexandre for a full award of costs against the London Borough of Croydon.
 - The appeal relates to the refusal of planning permission for the demolition of a garage and construction of two semi-detached houses and associated works.
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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 PPG details examples of unreasonable behaviour by the local planning authority including failure to produce evidence to substantiate each reason for refusal on appeal and making vague, generalised or inaccurate assertions unsupported by any objective analysis.
4. In this case the appellant is seeking a full award of costs on the basis that in his view the appeal could have been avoided and therefore the costs of the appeal not incurred at all.
5. The appellant considers that, amongst other things, the first reason for refusal on the Decision Notice alleging harm to the character and appearance of the area was not justified particularly given an earlier Permission In Principle (ref 20/01648/PIP) for dwellings on a larger site including the appeal site. Issues of impact of a proposed development on the character and appearance of an area are essentially matters of planning judgment on which professional planners can reasonably differ.
6. In this case, the Council had to assess a detailed planning application for two dwellings with, inter alia, associated hardstanding and parking. The determination involved the consideration of more specific elements of a proposed development than had been relevant or had crystallised at the time of the previous PIP application. The Council concluded that the proposal would be

out of keeping with the immediate surroundings and would fail to integrate successfully and enhance the surrounding natural environment resulting in harm to the townscape. I consider that it has itemised its criticisms avoiding vague or generalised language and such criticisms are on the spectrum of reasonable planning judgments. The fact that I have not agreed with all of the assessments in main issue no.2 of the appeal decision is not particularly relevant to whether or not they have acted unreasonably.

7. In relation to the first main issue alleging detriment to the amenities of neighbouring occupants at 126, 128 and 130 Coombe Lane, the appellant considers these to be "not justified". However, I consider that the Council has set out why it concludes there would be unacceptable overlooking of private areas and garden areas. There can be differing planning judgments in relation to what may or may not be overlooked or what may or may not be acceptable in the particular location of the proposed development. I consider the Council's views to be within the spectrum of reasonable planning judgments in relation to privacy and overlooking and adequately set out.
8. Whilst I understand the appellant's frustration in apparently not getting responses from the Council's Case Officer when contacted and not having notice of the unnecessary disabled parking space and the lack of demonstration of adequate visibility splays, this conduct by the Council has not caused the appeal to be necessary. Furthermore, the costs of the appellant's highways/transport expert would have had to have been incurred in order to provide the additional information.
9. Finally, the appellant argues that the section 106 agreement could have been supplied had the Council's Case Officer responded to any one of the numerous attempts to achieve contact. However, it has been clear since the publication of the Delegated Report that a legal agreement was, in the Council's view, necessary (paragraph 6.19). This report was dated and published on or around February 2023. A draft Section 106 agreement was supplied by the Council. It is clear from National Planning Practice Guidance and Planning Inspectorate Appeals guidance that a signed, witnessed and dated section 106 agreement is required prior to determination of the appeal if it is to be given any weight.
10. In the circumstances, it is not alleged that the appellant has had insufficient time to provide a signed, witnessed and dated section 106 agreement and so I cannot conclude that the Council's conduct has caused the appellant to waste costs in respect of the section 106 agreement.

Conclusion

11. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Megan Thomas K.C.

INSPECTOR