



Costs Decision

Site visit made on 24 October 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Costs application in relation to Appeal Ref: APP/L5240/W/23/3319966 Land and garages to rear of 1 to 4 Mulberry Lane, Croydon CR0 6QQ

- 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 Oli Walsh of Revilo Havelock 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 the demolition of garages and construction of 4 new mews houses with associated landscaping, cycle storage and refuse provision.
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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, 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 appellant seeks a full award of costs as they claim the Council has failed to produce evidence to substantiate the reasons for refusal the subject of this appeal and has made vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. The Council has contested this claim.
4. Much of the detail of the applicant's cost claim relates to the Council's processing of the application, particularly the Committee making a decision contrary to the recommendation made to it, and when considering the proposal, the Committee did not refer to conflicts with the Development Plan. Nevertheless, the written notice of decision issued by the Council explains their reasons for refusing the application and refers to policies of the Development Plan to which they found conflict. It is not for me to investigate the Council's handling of the application.
5. The Council's decision notice contains three reasons relating to; the effect upon the conservation area; living conditions; and whether satisfactory refuse facilities would be provided. The Council provided a statement which they set out how the effects of the proposal would conflict with the development plan.
6. In my decision I found that the proposal would harm the East India Estate Conservation Area, in conflict with S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Croydon Local Plan, dated 2018 and the National Planning Policy Framework. I found the case put forward by the

Council to broadly address the harmful effects of the proposal upon the CA. Consequently, I am content that this reason for refusal was evidenced and substantiated, and the Council has not acted unreasonably or caused the applicant additional costs associated with making the appeal.

7. Turning to living conditions, the case put forward by the Council did not specify the occupiers of which neighbouring properties would be harmed by the proposed development. Although the Council's statement did state that those nearest properties on Mulberry Lane would in their opinion be harmed. Even so, the Council used much of the same information they had already used to argue the opposite of what they stated in their committee report, without adequately explaining the harmful effects of the proposal. There was a lack of evidence to substantiate harm to the outlook of the neighbouring properties or any reference to the section drawing that showed the inter-relationship between the appeal proposal and the nearest properties on Mulberry Lane. My own assessment did not identify such harmful effects upon neighbouring occupiers. Moreover, one of the policies the Council stated in their reason for refusal in this regard was not directly relevant to living conditions.
8. In regard to whether suitable refuse facilities would be provided, despite the appellant's Refuse Management Strategy, swept path analysis and the plans showing the refuse facilities, the Council claimed there was insufficient information to assess how movements to and from the proposed dwellings would be safe. The Council made vague references to building regulations compliance distances but offered no firm evidence on this issue to justify their reason for refusal or what precise additional information they required. Nor did they explain why it was not possible to address this through a planning condition. Furthermore, they again referred to conflict with a policy that was not directly relevant to the refuse facilities or associated movements. I also did not find that reason for refusal to have been justified in my decision.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of reasons for refusal 2 and 3, relating to the effect upon the living conditions of neighbouring occupiers and whether satisfactory refuse facilities would be provided, and a partial award of costs is therefore warranted.
10. 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 ORDERED that the Council of the London Borough of Croydon shall pay to Mr Oli Walsh of Revilo Havelock Ltd, the costs of the appeal proceedings described in the heading of this decision limited to the preparation for the appeal relating to the issues of living conditions and refuse facilities, such costs to be assessed in the Senior Courts Costs Officer, if not agreed.
11. 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 an agreement as to the amount.

A Hunter

INSPECTOR