



Costs Decision

Site visit made on 22 January 2024

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th January 2024

Costs application in relation to Appeal Ref: APP/L5240/W/23/3326319 1a Brighton Road, Croydon CR2 6EA

- 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 Qasim Gulamhusein of 1a CR2 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 showroom and warehouse and erection of a 5 storey block to contain up to 28 self contained residential units and up to 3 retail units (Reserved matters are access, appearance, landscaping, layout).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. It is clear from the correspondence submitted that relations between the appellant's agent and the Council have become increasingly strained over the course of the application and appeal. That perhaps explains the reason why both sides have not engaged as fully, or listened to each other's points of view, as would have been desirable.
4. It has also led to a volume of correspondence that has increasingly been directed to expressing personal opinions rather than objectively addressing the merits of the case. That has culminated in some inadvisable wording in the appellant's final comments which suggest that the Council has deliberately misrepresented facts and made untrue statements. I have found no substantive evidence to support those assertions, which I consider to be regrettable. However frustrated the appellant's agent may have become with the process or the arguments made in this case, they should not have made such unfounded accusations.
5. So far as the appellant's procedural ground for costs is concerned, I do not consider that there was a lack of co-operation from the Council. The appellant was offered the opportunity for pre-application advice but chose not to take that up. There was then considerable correspondence in relation to validation requirements, and further correspondence during the application. The disagreements that arose were not ones primarily caused by a lack of co-

operation, but rather disagreement about what information was necessary at the outline stage.

6. So far as the appellant's substantive grounds for costs are concerned, it will be apparent from my decision on the appeal that further information on flood risk and the living conditions of future occupants was necessary to address the concerns raised by the Council, and in the absence of such information the evidence points to harm leading to a conflict with planning policies. The request for such information was necessary and reasonable notwithstanding the outline nature of the proposal.
7. Matters relating to mitigation of services and the environment, affordable housing, and carbon emissions have now largely been agreed in principle by the appellant and by the Council following the submission of further evidence as part of the appellant's grounds of appeal. The problem with all of these matters is that there is no legal undertaking to secure the necessary controls or mitigation. The need for a legal undertaking was apparent from the correspondence that took place during consideration of the application. A draft undertaking has now been submitted but that has been done too late in the appeal proceedings, and is in any case incomplete and therefore carries no weight. Those are failings of the appellant, not the Council.
8. The effect of the development on the character and appearance of the area is a matter of judgement. While I have concluded that a development of the scale of that proposed could be accommodated on the site without harm, I recognise there are cogent arguments both for and against, including those put forward by the Council. The reference to the lack of a commitment to public art in the Council's reason for refusal was unnecessary as this could be the subject of a condition, but that is a minor point that does not detract from the issue as a whole. I do not consider there is any ground for costs in relation to this issue.
9. There is however substance in the appellant's concerns around two of the reasons for refusal relating to optimisation and urban greening. In both cases the Council acknowledged in its statement of case that the issues could be addressed by condition. I do not consider that the additional evidence and arguments submitted by the appellant on these two issues was necessary to reach that view. The need to consider these issues at the outline stage as part of the appeal could therefore have been avoided.
10. The Planning Practice Guidance says that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded that suitable conditions would enable the proposed development to go ahead. While in this case there are other issues that have led to the appeal being dismissed, the Planning Practice Guidance further advises that costs may be awarded when a more helpful approach would have resulted in the issues being narrowed, thus reducing the expense associated with the appeal.
11. Refusing the proposal on these two grounds was unnecessary and therefore amounts to unreasonable behaviour. Furthermore, it has led to unnecessary and wasteful expense on the part of the appellant in having to challenge those grounds as part of the appeal.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial award of costs is

justified on the limited grounds relating to the issues of optimisation and urban greening.

Costs Order

13. In the 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 Qasim Gulamhusein of 1a CR2 Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in challenging at appeal the issues of optimisation (reason for refusal 1) and urban greening (reason for refusal 5); such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council of the London Borough of Croydon details of those costs with a view to reaching agreement as to the amount.

Guy Davies

INSPECTOR