



Costs Decision

Site visit made on 7 February 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Costs application in relation to Appeal Ref: APP/M3645/W/23/3324925 1 Loxford Road, Caterham, Surrey CR3 6BH

- 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 Mrs Bettina Neumann for a full award of costs against Tandridge District Council.
 - The appeal was against the refusal of planning permission for demolition of existing buildings and erection of three dwellings with associated access, parking and landscaping.
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Decision

1. The application for an award of costs is refused.

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 applicant considers the Council has exhibited unreasonable behaviour with respect to the substance of the matter under appeal. The applicant contends the Council changed its position from pre-application advice it had issued¹, and in so doing ignored a previous Inspector's reasoning about this advice². The applicant also argues the Council did not take account of that previous appeal decision as a material consideration in its decision.
4. The applicant further submits that there has been no significant change in Development Plan or Framework policy that would otherwise impact on the principle of development on the site since the pre-application advice letter was issued. They argue the Council did not reasonably substantiate its view that the proposal would give rise to demonstrable harm to the character of the area or living conditions of neighbouring occupiers above and over the pre-application position.
5. In relation to the reasons for refusal concerning the effect of the proposed development on the living conditions of neighbouring occupiers, and biodiversity, the applicant argues that the previous Inspector identified no harm in these respects, so it was unreasonable for the Council to raise them again. The applicant adds that concerns about these issues could have been dealt with by imposing conditions.

¹ Reference PA/2018/1071 dated September 2018

² Appeal reference APP/M3645/W/21/3287596

6. The pre-application advice issued by the Council in September 2018 commented on two options for redevelopment of the site. Both options involved demolition of the existing dwelling and erection of a pair of two-storey semi-detached houses on the Loxford Road frontage. At the rear of the site, one option proposed two-storey block of 6 flats and the other a pair of two-storey semi-detached dwellings with rooms in the roof. Both options proposed access to the rear of the site from Loxford Close, not from Loxford Road.
7. The outline scheme that is the subject of this costs application and related appeal involves the creation of a backland plot with access from Loxford Road, not Loxford Close. In this respect, the appeal scheme before me is fundamentally different in its effect on the character and appearance of the surrounding area from the pre-application options considered by the Council in 2018. The one reference to backland location in the Council's pre-application letter therefore relates to a materially different context from the one considered by the Council in application Ref TA/2023/83. Consequently, it was reasonable for the Council to reach a different conclusion on character and appearance in refusing that application, notwithstanding that fewer units were proposed.
8. The Council clearly stated in both its decision report and its first reason for refusal for TA/2023/83 that the proposed backland arrangement would result in harm to the pattern of development in the surrounding area. Moreover, it based its refusal in part on Policies in the Caterham, Chaldon and Whyteleafe Neighbourhood Plan (CCWNP), which was made in 2021, after the pre-application advice of 2018. The Council's decision also takes account of an objection from the Caterham Valley Parish Council, which includes reference to the previous appeal decision for the site. Therefore, I find there was a material change in development plan policy since the 2018 pre-application letter; that the Council did take account of the previous appeal decision in its decision; and that it did substantiate its refusal on the grounds of character and appearance.
9. That previous appeal also involved two options, one of which proposed a new access route connecting Loxford Close to Loxford Road, with the other proposing two backland plots accessed from Loxford Road. The Inspector in that appeal found the backland option at odds with the local suburban grain, noting that existing built forms in rear gardens were outbuildings ancillary to main properties, proportional to their plots. I find no inconsistency between this finding and the Council's decision on TA/2023/83, and no sudden change in the Council's position that ignored the Inspector's reasoning.
10. I have considered the other costs decisions brought to my attention. I accept that in both cases the Inspector found the Council had acted unreasonably with respect to previous pre-application advice that had been provided. However, I am not aware how similar the pre-application proposals and subsequent planning applications were in those cases. In addition, in the East Staffordshire case, the Inspector found the planning application had been determined by the same officer who had prepared the pre-application response, which is not the case in the current appeal. In the Central Bedfordshire case, the Inspector found a sudden change in position without reasonable justification other than a difference of professional opinion between two Council officers. In the current case, I have found the Council did not make a sudden change in position.

11. Therefore, the circumstances in these other costs decisions are not sufficiently similar to those before me to be directly comparable. I have considered this costs application on its own merits.
12. On the issue of biodiversity, I found in my appeal decision that no exceptional circumstances had been demonstrated such that the required surveys could be left to coverage by a planning condition, so I was not satisfied the requirements of Circular 06/2005 had been met. I was not aware of all the detailed evidence and advice that was available to the previous Inspector when he reached his conclusion or made a partial award of costs on this matter. I gave considerable weight to the specialist advice provided to the Council by the Surrey Wildlife Trust (SWT) in March 2023, which post-dates the previous appeal and is specific to the current appeal scheme. The appellant had not put forward any substantive evidence to persuade me that this specialist advice was incorrect or not relevant.
13. For these reasons, I find the Council was reasonable when it heeded the SWT advice in its decision and did not address the concerns about biodiversity via condition.
14. I am sympathetic to the applicant's position on the effect of the proposal on the living conditions of neighbouring occupiers. I found no harm in this respect in my appeal decision. Nevertheless, the Council acted reasonably in not restricting the height of the rear dwelling via condition, given the application was in outline with all matters reserved other than access.
15. Overall, bearing in mind I found harm under two of the three main issues in the appeal, and that I ascribed substantial weight to these harms, I do not find the applicant has incurred unnecessary or wasted expense in defending the appeal such that even a partial award of costs would be warranted.
16. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Carpenter

INSPECTOR