



Costs Decision

Site visit made on 29 February 2024

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2024

Costs application in relation to Appeal Ref: APP/P5870/W/23/3328083 127 Woodcote Road, Wallington, Sutton SM6 0QD.

- 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 Diane Oliver for a full award of costs against the Council of the London Borough of Sutton.
 - The appeal was against the refusal of permission in principle for the demolition of existing semi-detached house and replacement block of 2 flats, erection of detached 3-storey block of 5 flats, provision of 7 car parking spaces, 11 cycle store spaces, refuse storage, and modified vehicular site access.
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Decision

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

The submissions for Mrs Diane Oliver

2. The Council failed to accurately define the effect of the proposed development on the character and appearance of the area; it wrongly approached the decision-making process on an application for permission in principle by affording undue weight to illustrative material submitted with the planning application; and it incorrectly apportioned weight to the 'agent of change' principle.

The response by the Council of the London Borough of Sutton

3. It was reasonable for the Council to conclude that the proposal would be unacceptable for the reasons given and that appropriate reference has been made to relevant development plan policies and national policy and guidance which support the reasons for refusal.

Reasons

4. 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.
5. The Council's delegated report sets out the site context, planning history, a description of the proposed development, details about the consultation and publicity which took place and a summary of the responses received, and the planning policies it considered relevant to the proposal at the time of its decision. It then sets out an assessment of the proposal and describes in some detail its various concerns. The Council then arrives at clear conclusions and provides reasons for refusal which are supported with reference to relevant development plan policies.

6. The Council refused the application for permission in principle (PiP) because it was contrary to the provisions of the development plan, and it provided reasons for this. Whilst I disagree with the Council on some matters of judgement, specifically in respect of the effect the proposal would have on the character and appearance of the area, as I have explained in my appeal decision, the Council did nevertheless set out why, on planning grounds, it considered the proposal to be unacceptable for various reasons. As can be seen in my appeal decision, I too have found conflict with the development plan, read as a whole.
7. The description of the proposal adequately and concisely explains that the scheme would comprise a block of 2 flats, these being a replacement for the existing semi-detached house, and a further detached three-storey block of five flats would be created on the site. The general scale of development proposed is therefore evident from this description and, notwithstanding the detailed information given in the applicant's illustrative plans, the Council would be aware of the minimum internal and external space required to create a development comprising the two proposed blocks of flats.
8. Whilst I have not found harm in respect of the effect the proposed development would have on the character and appearance of the area for the reasons given in my appeal decision, it is not unreasonable for the Council to have reached a contrary view when applying its planning judgement having regard to the relevant development plan policies. The Council's conclusion on this matter is clearly explained in its delegated report and in the reasons given in its decision notice. I therefore do not find the Council to have acted unreasonably in respect of this matter.
9. The appeal site adjoins a builders merchant's office and yard. It is reasonable to conclude that such a use could give rise to noise and disturbance to future occupiers of the proposed flats. National planning policy, guidance, and the development plan are clear that the extent to which a noise sensitive development may be affected by existing adjacent land uses is a matter to be resolved through the planning process, as I have explained in my appeal decision. It is therefore reasonable that the Council would wish to satisfactorily resolve this matter prior to residential development being permitted on the appeal site, including through the PiP route. Accordingly, I do not find the Council to have acted unreasonably in respect of this matter.
10. However, given the purpose of the PiP process, I find that the Council placed unnecessary weight on the illustrative plans submitted voluntarily by the applicant. This is clear from the Council's concerns articulated in the first two lines of its second reason for refusal. It is unreasonable for the Council to conclude, in respect of the replacement of the semi-detached house, that the proposal would not provide high-quality and better-designed residential accommodation. It is also unreasonable for it to rely on measurements taken from illustrative plans when concluding that internal space standards would be inadequate, and it is unreasonable for the Council to conclude that the outlook from some windows shown on those illustrative plans would be unacceptable. Each of these matters would properly be addressed at the Technical Details Consent stage were PiP to be granted.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to

the first two sentences of the Council's second reason for refusal only, and that a partial award of costs is justified.

Costs Order

12. 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 Sutton shall pay to Mrs Diane Oliver the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the first two sentences of the Council's second reason for refusal of permission in principle only, such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to the Council of the London Borough of Sutton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David English

INSPECTOR