The Planning Inspectorate

Costs Decision

Hearing held on 9 October 2024

Site visit made on 8 October 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Costs application in relation to Appeal Ref: APP/L5240/W/24/3347431
128-130 Frant Road, Thornton Heath, Croydon CR7 7JU

- 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 Bav Patel (Mistique Events) 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 the existing warehouse and the erection of new dwellings (Class C3) with associated amenity, cycle parking, refuse storage, landscaping and associated works.

Decision

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

The submissions for Mr Bav Patel

2. The costs application was submitted in writing. No additional points were made during the hearing.

The response by the Council of the London Borough of Croydon

3. The response was made in writing. No additional points were made during the hearing.

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 appellant claims the Council has behaved unreasonably relating to the application of relevant policies of the development plan and its interpretation of the National Planning Policy Framework (the Framework), including references that are said to relate to a previous version of the Framework. In addition, the appellant's costs claim relates to the Council's application of the planning balance, including reference to locally listed buildings and highway safety, and its position regarding unmet housing need.

6. The Council has responded to argue that it has not behaved unreasonably, although it has said it was wrong not to regard the appeal site as both a brownfield site and a windfall site, in accordance with the definitions set out in Annex 2 to the Framework.

7. I have had regard to the points made by both parties only insofar as they relate to this application for costs. Their responses contained information relating to the merits of the substantive planning appeal, which I have addressed separately in the planning appeal decision.

8. In my appeal decision I found that policies of the development plan restricted the redevelopment of employment sites to residential uses, unless, amongst other criteria, no demand had been demonstrated for the employment site. In this regard Policy SP3.2 of the Croydon Local Plan (2018) (CLP) and Policies E4 and E7 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP), were directly relevant. The detailed marketing requirements are set out in the accompanying text supporting the policies, and Table 5.1 accompanying CLP Policy SP3.2, along with the Council's Protocol for Good Marketing for Tier 2,3 & 4 Employment sites (Protocol). The policies and marketing requirements were directly relevant to the appeal proposal and helpfully expanded on the policies and provided greater clarity on the marketing expectations. One of these expectations said that marketing the site, with it having a PTAL rating of 3, should include D1 uses.

9. I also found these directly relevant policies to be consistent with paragraph 85 of the Framework. It is not expected that a high–level document such as the Framework would explicitly detail marketing requirements for non-allocated employment sites, when such matters would be for Planning Authorities to ascertain according to local circumstances.

10. The Council reasonably applied this suite of relevant policies and the Framework when assessing the proposal and there was no requirement for any flexibility within the policies regarding the marketing exercise. As such this appeal and the associated costs in making it, could not have been avoided.

11. For the reasons set out in my decision I was not convinced by the appellant's reasons for not being able to have a flat for sale board fixed to the gates at the appeal site's entrance. The Council's request for this was not unreasonable, and it was consistent with its Protocol, to ensure adequate marketing of the appeal site.

12. Although I agree with the appellant that it would be unreasonable to require vacant possession to undertake the marketing, this is referred to within the supporting text to LP Policy E7. I also agree that it would not be mandatory for the price to be reduced if there is no interest, as there could be other incentives or changes to the marketing that may generate interest. Nevertheless, these points are arguable, and I am satisfied there was no unreasonable behaviour in the Council adopting such positions.

13. Regarding the highway safety aspects of the existing access, whilst the Council described the access as slightly unsafe in its submission, it was acknowledged that the access has constraints, which were clarified at the hearing. The locally listed buildings do not have the same protection as designated heritage assets, and there is no statutory duty in relation to them. I am content the Council was aware of their existence, and whilst its position could be regarded as inconsistent in its submissions, it was not ultimately a determinative factor in my decision.

14. The main parties accepted the Council has a 5-year supply of housing. In my decision I considered the merits of the Heath Clark appeal decision[1] regarding any unmet housing need, but its circumstances were very different to the appeal scheme including the quantum of housing and that site's allocation for another use. The weight the Inspector gave to the unmet housing need was much different to the weight I was able to give to it in my decision. The Council not accepting that there is an unmet housing need, given its reference in that appeal decision and other documents was probably unreasonable, but as the appeal did not turn on it, and it was not a main issue, I am not persuaded the Council's behaviour put the applicant to any additional costs. I was also not convinced that the Council should have assessed the appeal scheme in a London-wide context, given the scale of the proposal and its likely limited strategic impacts.

15. The Council's report did include a planning balance, which is for the decision maker to undertake and attach weight according to their findings. Although the Council's balance differs from that within my decision, it ultimately led them to the same decision, and in the circumstances, and accepting the errors highlighted at the hearing, it was not an unreasonable approach, and ultimately would not have avoided an appeal being made.

16. The acceptance by the Council that the appeal site is both a brownfield and windfall site were not determinative factors on this appeal, and these points were also clarified during the hearing. Whilst these errors could be regarded as unreasonable behaviour, I am not convinced that they put the appellant to additional time and expense, given that they were in the Council's appeal statement, and the first point at which the appellant could respond to them was orally during the hearing. I am also content the Council's reference to the Framework and the points it made could be understood.

Conclusion

17. For the above reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and I therefore conclude an award of costs is not warranted.

A Hunter

INSPECTOR

[1] Appeal Ref: APP/L5240/W/22/3297832