



Costs Decision

Site visit made on 18 July 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Costs application in relation to Appeal A Ref: APP/L5240/W/22/3303958 44A Westow Street, Crystal Palace SE19 3AH

- 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 M Fitzgerald of Opal Investments Ltd for a partial award of costs against London Borough of Croydon.
 - The appeal was against the refusal of planning permission for demolition of existing Class E premises and replacement with three storey building with Class E use on the ground floor, and two x 1 bed flats above.
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Costs application in relation to Appeal B Ref: APP/L5240/W/22/3309668 44A Westow Street, Crystal Palace SE19 3AH

- 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 M Fitzgerald of Opal Investments Ltd for a partial award of costs against London Borough of Croydon.
 - The appeal was against the refusal of planning permission for demolition of existing Class E premises and replacement with three storey building with Class E use on the ground floor, and two x 1 bed flats above.
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Decision

1. The application for a partial award of costs in respect of Appeal A is refused.
2. The application for a partial award of costs in respect of Appeal B is refused.

Reasons

3. 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.
4. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Paragraph 49¹ of the PPG sets out examples of these. The applicant considers those relevant here are preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; 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

¹ Paragraph: 049 Reference ID: 16-049-20140306

development to go ahead; and not determining similar cases in a consistent manner.

5. In summary, it is the applicant's view that reasons for refusal 1, 2, 4, 5, 6, 7, 8, 9 and 10 in both appeals are unjustified, unnecessary and unreasonable, based on incorrect assumptions, and any alleged harm can be resolved by conditions.
6. The applicant asserts that it was unreasonable of the Council to refuse planning permission due to the loss of an employment site given the existing and proposed uses fall within Class of the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. It will be seen from my decision that I disagree with this on the basis that the scheme was for the demolition and redevelopment of the site as a mixed use development. I have found that Policy DM4 of the Croydon Local Plan 2018 (the CLP) was relevant and the Council's approach was not incorrect.
7. The Council was not unreasonable for refusing permission on the basis that there were inadequate arrangements for delivery and servicing given the constraints along Haynes Lane and in the absence of knowing the end user and what their needs would be. There is no requirement within Policy DM4 or its supporting text requiring fitting out of the unit to be secured through a planning obligation. However, it seems to me that the free fitting out of the unit would need to be secured either this way or by a planning condition. It was not unreasonable of the Council to expect this.
8. Policy DM.1 of the CLP in respect of the Council's second reason for refusal explicitly states that it requires the minimum provision of homes designed with 3 or more bedrooms on sites of 10 or more dwellings. The other policy cited in the decision, Policy SP2.7, related to a strategic target. As the schemes were proposing to provide 2 dwellings, it was therefore unreasonable of the Council to apply the policy in this way and require this.
9. The applicant has asserted it was unreasonable of the Council to refuse permission on the grounds of contaminated land as this could be resolved through a suitably worded condition. It will be seen from my decision that I agree given that Policy DM24 of the CLP requires site investigations to be undertaken prior to construction. From evidence submitted, the Council has taken this approach on other cases. It has therefore acted inconsistently and refused permission on a planning ground capable of being dealt with by conditions. This amounts to unreasonable behaviour.
10. The applicant has argued that it was unreasonable of the Council to not take a flexible approach in respect of the requirement for the installation of a lift given the appeal proposals are for small site infill developments. Whether or not the policy should have been applied flexibly is a matter of planning judgment. Whilst I have not agreed with the Council in my decision, it was not unreasonable of the Council to have reached the decision it did.
11. The Council's reason for refusal 6 was concerned with the affect of the proposed development on the living conditions of neighbouring occupiers. The reason for refusal also alleged loss of light but this has been demonstrated to not be the case. The Council did not defend this aspect of the reason for refusal but nevertheless defended its position in respect of harm arising due to

overbearing impacts, loss of privacy and noise impacts. I have agreed with the Council's conclusions in this regard and found that these matters could not be addressed through the imposition of suitably worded conditions. The Council has not therefore behaved unreasonably in this regard.

12. The Council was concerned about lack of natural light to the proposed residential units. However, the applicant has demonstrated that this was not the case. The Council did not dispute this and recognised in its statement of case that daylight to the units would be acceptable. The Council nevertheless maintained its concerns about the quality of the living conditions, in respect of outlook and the provision of communal space. I have not agreed with the Council in respect of these matters. However, this is a matter of planning judgment and does not mean the Council behaved unreasonably.
13. I have come to the view that given the circumstances of the case, the policy in respect of the provision of communal space could be applied flexibly. The Council has taken this approach on another scheme. However, this in itself does not mean it had to do so here particularly as the circumstances of the other scheme were different. The fact that I reached a different conclusion to the Council, does not mean that the Council has acted unreasonably.
14. The Council refused the scheme on the basis of alleged impact on protected species with no biodiversity net gain. The applicant considers this was unjustified and could have been covered by a planning condition. As I have set out in my decision, in accordance with Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System these matters should only be left to conditions in exceptional circumstances. It is not for the Council to provide evidence that there are protected species within this building but it is entirely reasonable for it to consider if this is a possibility and require an investigation. I have found the building could potentially provide a bat roost given its age and design. There was nothing unreasonable in the Council's approach in respect of this reason for refusal.
15. The Council also referred to the lack of a legal agreement to secure a contribution to improvements to sustainable transport, in this case the need to prevent future occupiers from applying for parking permits. There is nothing to suggest that this was disputed by the applicant. In the absence of a legal agreement, it was reasonable of the Council to refuse the schemes on this basis and proceed to defend its position at appeal.
16. The Council's tenth reason for refusal alleged there would be insufficient cycle or refuse facilities provided or acceptable delivery and servicing arrangements. The applicant assert that these could be secured by the use of a condition and that no harm would arise through use of the access path over which the applicant has right of way. It will be seen from my decision that I have agreed that certain aspects of these matters could be addressed by planning condition. However, I have found that there would be insufficient space to address other matters and it would therefore be inappropriate to impose a condition if implementation of that condition would be unachievable. It follows therefore that I find the council has not been unreasonable in this regard.
17. In addition, in the costs applications submissions, reference is made to revised Policy DM10 in the draft Local Plan. Whilst the Council drew my attention to this policy in its appeal submissions as a policy relevant to the appeals, it has

not relied upon this policy in any of its reasons for refusal nor guided me to the specifics of this policy. I find no unreasonable behaviour arising from the Council in this regard.

18. Drawing together my assessment, I have found that in most respects the Council has behaved reasonably in its determination of the planning applications which have resulted in these appeals. I have found the Council's behaviour unreasonable in respect of requiring family sized housing and defending its second reason for refusal. I have also found that the Council behaved unreasonably in its fourth reason for refusal in requiring an investigation in respect of contaminated land to be undertaken when this could have been dealt with by condition, an approach which was supported by the Council's own policy.
19. The PPG explains that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. The applicant has not set this out.
20. From the appeal submissions, it is not evident that the applicant has been put to significant additional expense in countering the Council's position in respect of defending these two reasons for refusal. I am not therefore persuaded that the applicant has been put to unnecessary or wasted expense in the appeal process in relation to this.
21. I therefore conclude that, unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated, and an award of costs has not been justified.

Rachael Pipkin

INSPECTOR