



Costs Decision

Site visit made on 17 November 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Costs application in relation to Appeal Ref: APP/L5240/W/23/3318376 335 Lower Addiscombe Road, Croydon CR0 6RG

- 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 Abbas Dattoo for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of the Council to grant approval required under Article 3(1) and Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of an additional floor to comprise 1 x self-contained 3-bedroom flat.
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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 PPG outlines 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, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is 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.
4. The applicant considers that the Council prevented or delayed development which should clearly have been permitted. As can be seen from my decision, I have dismissed the appeal due to the effect of the proposed development on matters of external appearance. I therefore cannot agree that the development should have clearly been permitted and therefore there is not unreasonable behaviour in this regard.
5. The applicant considers that the Council have failed to produce evidence to substantiate each reason for refusal on appeal. The applicant considers that this is contrary to case law¹. The Council's case is clearly and precisely set out in their Decision Notice, Officer Report and Appeal Statement as to why they considered the proposed development to be unacceptable. The Council has therefore not acted unreasonably in this regard or contrary to the case law.

¹ Seddon v Bolton MBC [1981]

6. I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the development which justified its decision. The applicant had to address those concerns in any event.
7. Reference is made to a number of previous refusals to permit an additional storey on the appeal property. Whilst I have acknowledged the planning history insofar as it is a material consideration, my decision is in relation solely to the application subject to this appeal. The fact that this appeal follows from previous refusals does not amount to unreasonable behaviour where there have been valid planning reasons for refusing consent.
8. The applicant considers that the Council has failed to give due regard to Policy DM35.1 of the Croydon Local Plan (2018) in their decision. In an appeal such as this, the policies of the development plan can be considered relevant, but only insofar as they relate to the development and prior approval matters. The Council acknowledged the policy and considered that it does not mean that every 4 or 5 storey building would be supported, and that any building would still need to respect the character and appearance of the street scene and the wider area, including the built form, that being primarily two-storey properties.
9. I find that the Council's explanation of the application of the policy to the appeal development not to be unreasonable. I have also found that the requirement for development to complement existing predominant building heights in the area does not lend itself in support of the appeal proposal.
10. The applicant considers that the Council's latest rejection demonstrates that they are unwilling to consider any development on the site, effectively nullifying the permitted development legislation. As I have outlined, the handling of previous applications is not before me, furthermore, I can not comment on any other form of development that may be put before the Council in the future.
11. However, for this type of application, the Order requires developers to seek prior approval from the local planning authority on a number of factors, including external appearance. It is clear in the legislation that approval of the form of development proposed is not a *fait accompli*. The Council refused to grant prior approval having regard to one of the factors relevant to the consideration of such an application. This was not unreasonable.
12. The applicant considers that the Council have acted contrary to relevant case law² where the applicant sets out that the Courts confirmed that the street scene can be an important aspect informing the external appearance of a dwelling house and can form part of the decision maker's assessment, however, the degree to which it influences the external appearance is also contextually specific.
13. It is a matter of planning judgment as to whether consideration is given to the effect in terms of the building's intrinsic design and/or to the effect in terms of the building's relationship with adjoining or nearby properties. The street context may be an aspect of the building's external appearance. What is acceptable on one site may not be on another. In exercising their planning

² Cab Housing Ltd & Ors vs Secretary of State [2022] EWHC 208 (Admin)

judgement on the proposed development, the Council did not act contrary to the case law or unreasonably.

14. Therefore, it follows that I cannot agree that the Council has acted unreasonably in this case. As such there can be no question that the applicant was put to unnecessary or wasted expense. I find nothing to suggest that a decision was not reached on the basis of the planning merits of the development.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated. Therefore, a full award of costs is not justified.

A M Nilsson

INSPECTOR