



Costs Decisions

Site visit made on 4 July 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Costs application in relation to Appeal A Ref: APP/L5240/W/23/3315790 19 Ashburton Road, Croydon CR0 6AP

- 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 Datoos 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 alterations to the building at the rear of the site and associated alterations as part of the proposed change of use from storage and leisure into a self-contained dwelling.
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Costs application in relation to Appeal B Ref: APP/L5240/W/23/3315535 19 Ashburton Road, Croydon CR0 6AP

- 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 Datoos (ATF Construction Ltd) 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 alterations to the building at the rear of the site and associated alterations as part of the proposed change of use from storage and leisure into a self-contained dwelling.
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Decisions

1. The applications for full awards of costs are allowed.

Reasons

2. As set out above, two costs applications have been made. Although I have considered each application on its individual merits, to avoid duplication I have dealt with them together, except where otherwise indicated.
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. The PPG states 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.
4. Examples of behaviour that may give rise to a substantive award of costs include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where there has been a failure to produce evidence to substantiate each reason for refusal on appeal; where vague, generalised or inaccurate assertions have been made about a proposal's impact, which are unsupported by any objective

analysis; persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; and where planning permission has been refused on a planning ground capable of being dealt with by a condition.

5. The applicant contends that the Council's actions have demonstrated all the above examples of unreasonable behaviour.
6. The Council's decisions on the appeal proposals were different to the recommendations set out in the Council Officer's committee reports. The Council's Planning Committee is not required to accept the advice of its professional officers and is entitled to exercise its own planning judgement and reach a different conclusion. However, if a different conclusion is reached, the Council must clearly demonstrate, on planning grounds, why a proposal is unacceptable and provide clear evidence substantiating that reasoning.
7. In the appeals before me the Council has not submitted Statements of Case to assist in understanding the concerns of its Committee. The Council's rebuttal of the applicant's claims for costs awards are limited to an assertion that Committee Members did not act unreasonably in refusing planning permission for the appeal schemes.
8. The Council has provided a link to the video recording of the Committee Meeting. However, Paragraph 9.5.9.1. of the 'Procedural Guide: Planning appeals – England', states that audio or video evidence will not be accepted and that a written summary should be provided. Therefore, I have not viewed the recording of the Committee meeting and my decisions on these costs applications are based on the written evidence before me.
9. The Committee was advised by the Council's Officer that both appeal schemes would not have harmed the character and appearance of the area, and would have provided satisfactory living conditions for future occupiers, whilst safeguarding the living conditions of the occupiers of nearby properties. The Council Officer's recommendations took account of previous appeal decisions on the site, which were listed in the Committee reports.
10. In reaching these conclusions, the Committee Reports set out a reasoned and objective analysis of the appeal proposals' effects with reference to established quantitative space standards and qualitative objectives contained in relevant development plan policies. The Council Officer's analysis of the effects of the appeal proposals had regard to their respective scales and layouts, the separation distances from nearby properties, the positions of window openings in the respective proposed dwellings and in existing residential buildings nearby. The Council Officer advised whether any harm arising could be made acceptable through planning conditions. The applicant's transcript of the Committee meeting also shows that Officers reiterated their analysis of the appeal proposals' effects to the Committee during the meeting, including with reference to previous appeal decisions.
11. With regard to the Council's reason for refusal number 1 (RFR1), the term "visually intrusive" can, to my mind, relate not only to the effect of a development on the living conditions of nearby occupiers, but also to the character and appearance of an area. Whilst the evidence before me indicates that living conditions were the Committee Members' primary concern, the planning policies cited in the reason for refusal also include policy objectives

relating to the character and appearance of an area. That the applicant has provided an analysis of the appeal proposals' effects on the character and appearance of the area, supports my finding that RFR1 was not, in either decision, sufficiently clear. As such it has led to ambiguity that has not been clarified through the appeal process.

12. In the face of the Officer's advice in the Committee reports, there is limited evidence of analysis or explanation in the Council's RFR1, as to why it found that the siting and relationship of the appeal proposals to the flats at No 19, would have resulted in visual intrusion and loss of privacy. It is also unclear whether the Committee took due account of the recommended planning conditions that the Officer advised would make the appeal developments acceptable. Whilst this is a matter of judgement for the decision maker, I find on the evidence before me, that the Council's decision in RFR1 has not been adequately substantiated through objective evidence in either appeal.
13. Furthermore, the high-level windows in the Appeal B dwelling, which would face the rear wall of Number 19, are set in a very similar position to a high-level window in a previous appeal proposal¹ relating to the same building on the site, which the Inspector found would not harm the privacy of the occupiers of Number 19. To my mind, the differences between the high-level windows in both appeals are not so significant that a different conclusion to that of the previous Inspector should have been reached by the Committee. As such, the Council has unreasonably objected to an element previously indicated to be acceptable by an Inspector.
14. In the context of the Council Officer's recommendations, there is limited evidence of analysis or explanation in the Council's RFR2, as to why the appeal proposals would lead to poor outlook and harm to the future occupiers' living conditions. Whilst the issue of outlook is also one of planning judgement, I find that on the evidence before me, the Council's decisions in respect of RFR2 have not been adequately substantiated in either appeal.
15. Overall, when set against the Council Officer's well-reasoned analysis and assessment of the appeal proposals' effects, I find that the Council's refusal reasons have not been substantiated by objective analysis. As such, they amount to generalised assertions about the proposals' respective impacts. Consequently, the applicant's evidence in rebutting the Council's refusal reasons has been more extensive in scope than it should have been, and this is highly likely to have led to unnecessary time and expense for the applicant in pursuing the appeals. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and full awards of costs in both appeals are justified.

Conclusions

16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and full awards of costs are therefore justified.

Costs Orders

17. 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

¹ APP/L5240/W/19/3242553

Council of the London Borough of Croydon shall pay to Mr Abbas Datto, the costs of the proceedings in both appeals described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to the Council of the London Borough of Croydon, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

G Sylvester

INSPECTOR