



Costs Decision

Site visit made on 24 July 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Costs application in relation to Appeal A Ref: APP/L5240/W/23/3328664 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 A Dato 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 outline planning consent for the erection of an additional floor above the existing building to comprise up to 5 self contained residential units with all matters reserved.

Costs application in relation to Appeal B Ref: APP/L5240/W/23/3332787 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 Dato for a full award of costs against the Council of the London Borough of Croydon.
- The appeal was against a refusal to grant approval required under Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the erection of 4th floor to create 1 additional self-contained flat.

Decision

1. The application for an award of costs for Appeal A is refused.
2. The application for an award of costs for 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.

Appeal A

4. The Applicant seeks a substantive award of costs on the basis that the Council's request for information was unreasonable, particularly given that the application was submitted in outline with all matters reserved and that the development was supported by Policy DM35 of the Croydon Local Plan. Accordingly, it is said that the Council delayed and prevented a development that should have been approved. I have taken this to be an application for a full award of costs.
5. The Council sought additional information from the applicant in order to assist it in determining the outline application. Under the terms of the Town and Country Planning (Development Management Procedure) (England) Order

2015, they were entitled to decide that some of the reserved matters ought not to be considered separately from the application. Similarly, it was the applicant's right to choose not to provide the requested information, knowing that the Council would be unable to determine the application without it and thus an appeal could be a likely outcome.

6. I do have some concerns over the Council quoting the wrong legislation and its apparent confusion over whether it was requesting full details or illustrative drawings. Furthermore, it is not entirely clear why the Council having formally requested the information and stated that it was unable to determine the application without those details, then chose to determine the application, particularly as the situation had not evolved and the reasons for refusal were based on insufficient information.
7. The applicant suggests that had the Council better defined its position they may have opted to amend the application instead of being forced to appeal. However, given that the applicant has made it quite clear that the purpose of the application was to submit a bare outline application and retain flexibility when considering further details, it seems unlikely that such an amendment or alternative to this appeal would have materialised. Indeed, the appeal submission is based principally on not having to provide the additional information.
8. Given all of the above, there seems a strong probability that even if the Council had maintained its initial position, an appeal would have resulted against non-determination, given the applicant's insistence that no details would be provided and their stated desire for a definitive outcome. As such, the respective positions of the main parties would not have been very different from that which has transpired in the current appeal.
9. Nevertheless, the applicant maintains that the Council were unreasonable in initially seeking the additional information. The proposal was not supported by any detailed assessment or evidence. The applicant considers that this is appropriate for an outline scheme and the Council's stance would effectively require a full application and preclude the submission of an outline scheme.
10. If an outline permission were to have been permitted, the applicant would have been entitled to a considerable degree of expectation that the full extent of the development in the outline scheme and as set out in the application forms could be achieved on the site. Therefore, to enable the Council to determine the application in a positive manner it took the view that it needed to be satisfied that the outline scheme could be accommodated on the site.
11. Although layout, scale and external appearance were listed as reserved matters, they can be important issues in determining the principle of development. Such reasoning applies in this case. The Council's policies and those in the London Plan set out a series of criteria against which proposals will be judged. These include the effect of a proposal in terms of whether it respects the local character and contributes positively to the public realm but also in terms of respecting the scale, height, massing and density of its surroundings.
12. In order to comply with the requirements of the development plan the site's location and surrounding context could reasonably need to be considered. Whilst each case must be considered on its own merits, in support of this

approach, the site's planning history has shown in broad terms the difficulty in achieving any upward extension of the building given its context and surroundings. Therefore, the scheme's layout, scale and external appearance can be seen as going to the heart of the issue and as fundamental aspects in the assessment of the principle of the development.

13. Therefore, I see nothing unreasonable in the Council deciding that the acceptance of the proposal should be guided, at least in part, by these matters and that they needed to be given a level of consideration in order to be able to support the scheme. Without this supporting assessment, the Council were clearly concerned that it could not be demonstrated that the proposal would have an acceptable effect on the surrounding area. Indeed, I was unable to conclude, based on the information before me, that the proposal would have an acceptable effect upon the character and appearance of the surrounding area.
14. In the case of fire safety, the applicant points to other Council's which choose not to request such information with outline proposals. However, Policy D12 of the London Plan does not indicate that the issue is incapable of being considered at the outline stage. Policy D12 requires developments to achieve the highest standards of fire safety. Given the size of the building and its location, it was not unreasonable for the Council to want to be satisfied in this case that from the outset some regard was being given to the issue and any implications for the building. This does not mean that this would be required for all outline proposals but in this instance, there was a reasonable basis for seeking some details.
15. Even if I were to disagree with the Council's stance on the need for refuse storage information, it was nevertheless reasonably possible to reach a view and argue that without more details as to the scale of development, this could have implications for the site/neighbours/future residents. Even if I were to conclude that requesting such details was unreasonable rather than merely excessive, the applicant demonstrated quickly and easily without wasting expenditure how the matter could be addressed. In reality, there was so little extra work involved in responding to this specific point that it can be regarded as de minimis. As such it did not cause unnecessary or wasted expense.
16. It is also the applicant's position that Policy DM35 of the Croydon Local Plan provides support for a 5 storey building at the appeal site and unequivocally establishes the principle of such development. On this basis it is suggested that seeking further details was unnecessary within the context of an outline application.
17. However, the policy does not identify the appeal site. Whilst the applicant draws various assumptions from the policy wording to reach such a conclusion, the appeal site is not identified. The policy establishes a broad context for future developments. I do not see it as being an indication that 5 storeys must be achieved or that every site at the junction would be capable of achieving that quantum of development. Furthermore, the policy makes clear that any development must be done in a way which respects the existing character of the area. Policy DM35 does not therefore provide the support for the outline scheme that the applicant ascribes to it.
18. I have had careful regard to the applicant's detailed costs submissions and the case law references that have been put forward. I understand their concerns regarding the ability to submit outline applications and the clear, balanced

decisions Council's need to take when seeking further information. Whilst the Council's approach has indicated at times that it was not entirely cognisant of the nuances of the legislation, it was clear what the Council was seeking from the applicant and the reasons for the request. Some of the information being sought could be seen as being excessive but importantly, I do not find that the Council's actions impeded an application that should have been approved.

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. It follows that an award of costs is not justified for Appeal A.

Appeal B

20. In respect of Appeal B, the applicant contends that it was not reasonable for the Council to argue that the proposal would have a material visual impact on the street scene. In support of this, reference is also made to the previously rejected schemes and that the Council's decision has nullified the permitted development legislation as well as being contrary to the Local Plan. A full award of costs is sought.
21. It is evident from my appeal decision that I have agreed with the Council and found the scheme to have a harmful visual effect. There is nothing to suggest that the Council's decision was made other than on the planning merits of the development and I do not find their decision to have been unreasonable.
22. Whilst the prior approval procedure provides an alternative mechanism to applying for planning permission, it does not mean that proposals submitted through this procedure will necessarily be successful. That other prior approval schemes for the building have been submitted and rejected was not a matter before me and was not a reason to allow this proposal. I am unable to comment on what future prior approval schemes may come before the Council or the approach they may take.
23. As this was a prior approval scheme, the appeal was not determined on the basis of the duty in s38(6) of the Planning and Compulsory Purchase Act 2004. Notwithstanding this, insofar as the development plan was a material consideration relevant to the prior approval matter, I did not find the Local Plan to have specifically identified the appeal site as being suitable for a 5-storey development or to support the appellant's position.
24. I do not find that the Council has acted unreasonably in regard to Appeal B or that the applicant was put to unnecessary or wasted expense.

Conclusion

25. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in either Appeal A or Appeal B.

Stewart Glassar

INSPECTOR