



Costs Decision

Site visit made on 16 April 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 SEPTEMBER 2024

Costs application in relation to Appeal Ref: APP/L5240/W/23/3322105 2A Addiscombe Avenue, Croydon CR0 6LH

- 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 Qasim Gulamhusein of Marlpark 2a CR0 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 the demolition of existing house and garage and erection of a new 2-storey building with accommodation in the roof space comprising 5 self-contained flats.

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 ("the 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. Paragraph 047 of the PPG gives examples of behaviour which may give rise to a procedural award of costs against a local planning authority. These include a "lack of co-operation with the other party", and "providing information that is shown to be manifestly inaccurate or untrue"¹. Paragraph 049 gives examples of behaviour which may give rise to a substantive award of costs. Among are making "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", and "not determining similar cases in a consistent manner"². The applicant's claim falls broadly within these areas, though it also strays into other matters set out in the PPG.
4. It appears that the applicant and the Council may (at least in the past) have had something of an attritional relationship. I note the applicant's agent e-mailed the Council in March 2023 seeking to "reset" the relationship and offering to make amendments to the scheme. However, while the Council's response (that they would not accept material amendments but would consider accepting non-material amendments) obviously fell short of what the appellant hoped for, it is not indicative of a lack of co-operation on the Council's part, at least in the terms set out in the PPG.

¹ Reference ID: 16-047-20140306

² Reference ID: 16-049-20140306

5. The applicant has provided several examples of purported manifest inaccuracies or untruths, or “vague, generalised or inaccurate” assertions, on the part of the Council. For reasons which are dealt with at length in my main decision, I supported the Council’s assessment of several of these – in respect of the need to provide disabled parking, the appearance of the elevations and fenestration, the amount of bedroom space within two of the proposed flats, and the storage of refuse. In respect of the storage of bicycles, and access to parking spaces and gardens for wheelchair users, the disagreements between the parties were borderline questions of planning judgement; although the Council’s concerns on these matters were not misplaced (nor were they manifestly inaccurate or vague) I found that they could have been acceptably addressed by conditions.
6. The Council’s assessment of the impact in respect of a sense of enclosure at the rear of houses on Everton Road was again a subjective matter of planning judgement. That I did not agree with the Council’s judgement is not in itself evidence of it having behaved unreasonably. Only in respect of trees – where it should have been apparent that any significant trees on the site had already been removed – could it be said that I found the Council’s evidence to be significantly inaccurate.
7. The Council considers that it was assessing *whether* the development should go ahead, not *how* it should, that it had not been demonstrated that the scheme could comply with relevant policies and standards, and that it would have been inappropriate to attempt to secure details through the use of conditions. As I have set out above, and at greater length in my main decision, I consider that some of the areas of dispute could have been resolved by the use of conditions. However, this was in the light of the additional evidence provided to me (by both parties, though mainly the applicant) during the appeal. It is notable that, while I considered that conditions could have addressed some of the reasons for refusal, this did not make the development as a whole acceptable.
8. In respect of consistency, the applicant refers to the grant of planning permission for the “Button Court” development at 2A Everton Road (LPA Ref: 18/03360/FUL). My attention was particularly drawn to the fact that in that case, the development was approved as a “car-free” scheme and with no legal agreement relating to car parking. The reasons for this difference were not explained by the Council, and I note the applicant states that the Button Court proposal was accepted without a parking stress survey. It is not clear to me whether the parking situation in the area has changed significantly since the Button Court scheme was approved. It may be the case that the appeal site would be suitable for a car-free scheme, but as I have set out in my main decision, I found the principal shortfall of the appeal scheme (in terms of parking, at least) to relate to a lack of, or the quality of, evidence on the matter. Other matters raised in respect of Button Court relate to conditions; again though, on the basis of the evidence before me these appear to relate to matters of how that development could be carried out rather than (as in this case) the question of whether it should be permitted at all.
9. Previous appeal decisions³ at 2A Addiscombe Avenue are addressed in my main decision. While the appeal site is self-evidently the same, there appear to be considerable differences between the scope and scale of the proposals, and for

³ PINS Refs: APP/L5240/W/23/3316328, APP/L5240/W/22/3310644 and APP/L5240/W/23/3317139

the most part they raised different main issues. None of the three previous appeals to which my attention was drawn was allowed, and none demonstrates that the Council has acted inconsistently in its decision making.

10. Finally, I note also the applicant's dissatisfaction with the pre-application advice received from the Council. However, while I can understand that apparent inconsistencies between pre-application advice and decision can be very frustrating, the PPG is clear that pre-application advice is not binding; "it cannot pre-empt the democratic decision-making process or a particular outcome, in the event that a formal planning application is made"⁴. It is not therefore in itself demonstrative of unreasonable behaviour.
11. In respect of the trees matter only, I have found the Council's reasoning to be manifestly inaccurate, and to have been unreasonable in the terms set out in the PPG. While I have disagreed with the Council's planning judgement on some matters, including whether conditions would be appropriate, this is not usually a clear indicator of unreasonable behaviour. However, even if it did cross that line, and amount to further unreasonable behaviour, In order to make an award of costs, I need to be satisfied that any unreasonable behaviour resulted in unnecessary or wasted expense.
12. The applicant argues that the Council's conduct meant that they were denied an opportunity to engage with the Council to narrow the disputed issues, thus necessitating the appeal. I have not found the Council's overall stance to be unreasonable, however. The Council' was inaccurate in respect of trees in a way which I consider to have been unreasonable. It may perhaps also have been said to behaved unreasonably in respect of conditions, though I recognise that the context is one in which the Council considered the scheme to be unacceptable on numerous fronts. However, its actions in respect of the several other reasons for which planning permission was refused were reasonable; I have either agreed with and upheld them in my appeal decision or, at very least, found them to have been subjective matters which were substantiated adequately during the appeal.
13. Taking all of this together, it seems likely that the planning application would still have been refused, and the applicant would still have incurred the costs of appeal.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Cryan

Inspector

⁴ Paragraph: 011 Reference ID: 20-011-20140306