



Costs Decisions

Site visit made on 11 December 2024

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2025

Costs application A in relation to Appeal A Ref: APP/L5240/X/23/3332881

16 Elgin Road, Croydon, CR0 6XA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of a lawful development certificate to confirm the lawful use of both maisonettes as [sic] 16 Elgin Road as C4 Small Houses in multiple occupation.
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Costs application C in relation to Appeal C Ref: APP/L5240/W/23/3334189

16 Elgin Road, Croydon, CR0 6XA

- 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 (Marlpark 16 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 conversion of building comprising 2 x C4 Small HMOs into 3 self contained 1 bedroom flats.
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Costs application D in relation to Appeal D Ref: APP/L5240/W/24/3337606

16 Elgin Road, Croydon, CR0 6XA

- 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 (Marlpark 16 CR0 Ltd) for a partial award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of outline planning permission for scale only for the excavation of the existing basement across the entire footprint of the building; creation of new light-wells at the front and rear of the building; ground floor single storey side extension; single storey rear extension and [sic] the construction of a new small dormer window in the loft at the rear of the property to create 4 self contained flats.
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Costs application E in relation to Appeal E Ref: APP/L5240/X/23/3333963

16 Upper Flat, Elgin Road, Croydon, CR0 6XA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of a certificate of lawful use or development to affirm the lawfulness of installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonettes at 16 Elgin Road, under the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning Act 1990.
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Costs application F in relation to Appeal F Ref: APP/L5240/X/24/3339944
16 Upper Flat, Elgin Road, Croydon, CR0 6XA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was against the refusal of a certificate of lawful use or development to affirm the lawfulness of installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonettes at 16 Elgin Road, under the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning Act 1990.
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Decisions

Application A

1. The application for an award of costs is refused.

Application C

2. The application for an award of costs is partially allowed, in the terms set out below.

Application D

3. The application for an award of costs is partially allowed, in the terms set out below.

Application E

4. The application for an award of costs is refused.

Application F

5. The application for an award of costs is partially allowed, in the terms set out below.

Preliminary Matters for Costs Applications A, C, D, E and F

6. There is no costs application associated with Appeal B but I have referred to the second through to the fifth costs applications as Applications C, D, E and F, so as to correspond with their associated appeals.
7. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises¹ 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.
8. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the merits of the appeal. The PPG provides examples of unreasonable behaviour which may result in an award of costs against a LPA for both procedural² and substantive³ matters, including:

¹ Paragraph: 028 Reference ID: 16-028-20140306

² Paragraph: 047 Reference ID: 16-047-20140306

³ Paragraph: 049 Reference ID: 16-049-20140306

Procedural

- lack of co-operation with the other party or parties
- delay in providing information or other failure to adhere to deadlines
- providing information that is shown to be manifestly inaccurate or untrue

Substantive

- 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
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis
- acting contrary to, or not following, well-established case law
- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal

Application A

Reasons

9. I understand the applicant's frustration over communication issues with the LPA and the time taken to determine the application subject to Appeal A. However, even if I were to agree that amounted to unreasonable behaviour, the appeal and associated expense would not likely have been avoided.
10. The applicant makes further submissions relating to a delay in providing information and the failure to adhere to deadlines during the planning application process and refers to the PPG which cites that as an example of unreasonable behaviour. However, that example is given in the context of procedural matters at appeal, rather than at planning application stage. It is not shown that the LPA behaved unreasonably by delaying in providing information or failed to adhere to deadlines during the appeal stage.
11. The applicant argues that following his letter of the 30 October 2023 the LPA subsequently issued a hasty and ill-considered decision to refuse the application. In that regard, the applicant asserts that the LPA has engaged in conduct that amounts to preventing or delaying development which should clearly have been permitted and, to that end, has repeated many of the arguments made in his appeal decision.
12. However, it will be evident from my appeal decision that I have found that the LPA's refusal to grant a LDC was well-founded and that the appeal should fail. It follows that there was no substantive unreasonable behaviour in that regard.

13. The applicant asserts that the LPA has failed to produce evidence to substantiate its reason for refusal. Notwithstanding the onus lying with the applicant to make his case on the balance of probabilities, if there is no evidence to contradict or make his version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.
14. In that context, I understand the applicant's frustration as there is limited evidence to contradict the case made. I also note the applicant's criticisms of the LPA's assessment of the evidence (although I have highlighted a number of similar concerns). Nevertheless, whilst it will be evident that I have agreed with the LPA's decision to refuse to grant an LDC, the reasons why I have reached that decision are not the same. Nor are they the same as the main thrust of the applicant's case. Therefore, the differing interpretation of the facts and the evidence does not amount to unreasonable behaviour on the part of the LPA, or the applicant for that matter.
15. The applicant appears to be critical of the LPA's reference to the four and ten year immunity periods, which he says are not applicable to his case. Whilst I agree that the four year immunity period is irrelevant, the ten year immunity period of s171B(3) is pivotal in this case, having regard to the applicant's own timeline of events. It follows, that the LPA's reference to the same does not amount to unreasonable behaviour.
16. The applicant highlights that the PPG states that if a LPA obtains evidence (in relation to an LDC), this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence⁴. The applicant asserts that the LPA has chosen to withhold critical evidence and reference is made to Council Tax records, HMO licences, as well as challenges to the NPI report and Statutory Declarations. However, the two latter items are the applicant's evidence. The LPA also explain that the Council Tax records are publicly available and that there are no HMO records for the period sought.
17. The applicant contends that specific Council Tax details are not publicly available and argues the importance of that information to his case. Somewhat contradictory, the applicant is also critical of the LPA's purported reliance on Council Tax records, stating that they do not serve as reliable indicators of the use class of the property in question.
18. Whilst unlikely determinative, Council Tax information can form part of an overall picture of evidence that could assist the applicant's case. Therefore, withholding that information, which is referred to in the officer report, and not providing opportunity to comment on it, amounts to unreasonable behaviour. However, it is very unlikely that the appeal and associated costs would have been avoided because of the very clear difference in positions. For the same reason, I do not consider that greater engagement from the LPA would have avoided an appeal.
19. Moreover, the outcome of the appeal would not be different because even in the unlikely event that the Council Tax records demonstrated HMO uses on 1 January 2010, it is clear from the other evidence that the use did not continue without material interruption for the required 10-year period.

⁴ Paragraph: 006 Reference ID: 17c-006-20140306

20. The LPA's assessment of the NPI report is not unreasonable. Indeed, I have highlighted a number of similar issues, which primarily relate to the lack of corroborating evidence, rather than the exclusion of transient renters. The applicant states that to demand an exhaustive breakdown of every data source utilised is both impractical, unrealistic and unnecessary. Nevertheless, the NPI report refers to the evidence it has relied on but none, let alone all, is provided to corroborate its findings.
21. I agree that the transactions referenced in the NPI report, such as food delivery orders, gym memberships and utility bills, would indicate occupancy. The LPA is wrong to argue otherwise. Again however, no such corroborating evidence was provided, so in overall terms, I do not consider that the LPA's assessment of the NPI report amounts to unreasonable behaviour; it is clearly entitled to interrogate that which is before it.
22. The applicant is also critical of the LPA's assertion that the use of the property has changed to self-contained flats and states that to be another example of their propensity to make vague and unsupported claims. The applicant asserts that he has provided ample legal precedent, illustrating that the installation of elfin kitchens does not equate to the creation of self-contained units and the LPA's failure to counter this with any form of legal argument or caselaw leaves their assertion baseless and further substantiates the claim for costs.
23. However, the use of the property for eight self-contained flats is the subject of an enforcement notice which was in force at the time of the application. For the reasons explained in my decision, that is clearly not an irrelevant matter as stated by the applicant, and the LPA did not act in an unreasonable manner in referring to it, or to events post 28 January 2020 (the date of the Article 4 Direction).
24. I appreciate that the applicant sought to appeal against that enforcement notice but that was not made in time and s285(1) of the 1990 Act states that "The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought."
25. Moreover, because I found that the use of the property for HMOs had not gained immunity from enforcement action through the passage of time (by virtue of s171B(3) of the 1990 Act), it was not necessary for me to consider whether lawfulness was subsequently lost by a material change of use of the maisonettes to self-contained flats, as stated in the notice. That is because lawfulness hadn't been achieved so could not be lost. Consequently, as I have not considered the respective arguments on this issue, I cannot conclude that the LPA's position was an unreasonable one.
26. The applicant further argues that the LPA has demonstrated disregard for established case law. However, a planning appeal decision is not case law. Moreover, as explained in my decision, the timeline given by the applicant differentiates the appeal associated with this application to the appeal decision cited⁵. In any case, I do not find the LPA's approach to be inconsistent with that appeal decision. The LPA just made a different judgement on the evidence. In that regard, whilst the Inspector in the appeal decision cited correctly explains that the

⁵ Appeal Ref: APP/L5240/X/21/3268559

licensing regime for HMOs is separate to the planning use, licenses can, as explained in the other decision referred to by the applicant⁶, clearly help in determining use on the balance of probabilities. It was not therefore unreasonable to make reference to the lack of HMO licences for the appeal property prior to 2021.

27. I'm not convinced that the LPA pointing out that the statutory declarations (SDs) were not corroborated by any further evidence, such as photographs showing the layout of the building or the features referred to, amounts to a rejection of those statutory declarations or an accusation of perjury, or indeed unreasonable behaviour. Moreover, the corroborating photographs subsequently provided, were at appeal stage, not application stage and not exhibited as part of the SDs. In any event, the SDs confirm that the maisonettes were vacant for a considerable period of time, which is fundamental to why the LDC should not be granted in the particular circumstances of this case.

Conclusion on Application A

28. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Application C

Reasons

29. Dealing with the first reason for refusal, it will be evident from my appeal decision reasoning, that whilst appearance is a reserved matter, approval of the proposed layout would result in the direct and unacceptable loss of an important architectural feature (the porch), which makes a positive contribution to the East India Estate Conservation Area (EIECA). That in turn would establish the acceptability of how that loss would affect the appearance of the property. It would not be possible to resist that consequential harm when considering appearance as a reserved matter because of that overlap. That is clear and the LPA has not deviated from the proper application of planning law and principles relating to reserved matters as argued.
30. It follows that, in that regard, I do not find unreasonable behaviour arising from vague, generalised or inaccurate assertions about the proposal's impact, or by unduly preventing and delaying development that should clearly have been permitted.
31. The second reason for refusal relates to living conditions and includes inadequate internal floor space. That relates to the purported failure of the second floor flat to meet development plan and Nationally Described Space Standards on the basis that it would have a bathroom, rather than shower room. For the reasons set out in my decision, I am satisfied that what is intended to be depicted is a shower room, thereby meeting the standards. Nevertheless, the room is annotated as a 'bathroom', and the shower has a rectangular shape, consistent with a bath. It is not therefore an unreasonable misinterpretation on the part of the LPA.
32. I appreciate that the applicant clarified at appeal stage that the proposal is for a shower room, but, as a matter of fact, the revised plans still label it a bathroom and despite the applicant's protestations it is not a distinct representation of a shower. I

⁶ Appeal Ref: APP/Y3615/X/23/3319131

appreciate the width of the room would likely preclude a standard length bath, but a smaller tub could be accommodated. The LPA has not therefore acted unreasonably by maintaining its objections.

33. In terms of external living space, I note the applicant argues that landscaping is a reserved matter but, as explained in my decision, there is overlap between layout and landscaping in terms of the provision of external amenity space. I do not therefore agree that the LPA has deviated from the statutory definition of “layout”, as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
34. Whilst I agree that the scheme would likely provide acceptable amenity space for the occupants of the flats given the size of the rear garden, it is not unreasonable to require that the applicant demonstrates that external space standards are capable of being met through an acceptable layout.
35. It is clearly not correct to argue that the LPA should have approved the scheme as submitted simply on the basis that the issues were capable of being remedied. That would just result in unacceptable development being approved. The scheme as submitted to the LPA was not in accordance with the development plan so its refusal did not prevent or delay development which should clearly be permitted.
36. Although the applicant states that the revised plans formed part of the appeal submission, the LPA’s statement of case confirms that they did not receive them. In the circumstances, the LPA cannot reasonably be accused of persisting with its objections despite clarification and corrected plans.
37. Rather, once the LPA had opportunity to see and comment on the revised plans at appeal stage, it confirmed that the rear gardens would meet the quantitative development plan requirements. Whilst I have found that revised drawing to be acceptable, the LPA reasonably sets out its concerns over the proposed layout of the rear garden, which is a matter of planning judgement.
38. Although I agree that privacy concerns could be addressed at reserved matters stage, it is not unreasonable to highlight such issues as a direct result of the proposed layout. In any case, privacy concerns do not form part of the LPA’s reasons for refusal. Moreover, it is also a matter which the applicant should be able to deal with quickly and relatively easily.
39. Similarly, the LPA did not act in an unreasonable manner by highlighting its concerns regarding the effects on the mature tree in the rear garden arising from the layout plan provided by the applicant at appeal stage. The LPA was not aware of that potential harm at application stage so could not have reasonably included it as a reason for refusal.
40. I appreciate that the application was determined well beyond the prescribed period and that will have been frustrating to the applicant. I also appreciate that during the prolonged determination period the applicant made it abundantly clear in his emails that he was amenable to making amendments so as to remedy any concerns the LPA may have had. Moreover, the applicant specifically requested that if the LPA was looking to refuse the application, that it could share its reasons with a view to narrowing the issues prior to decision, so if an appeal was deemed to be

necessary, costs could be saved. The applicant has also evidenced that chasing emails were sent to the LPA.

41. Whilst I sympathise that the case officer was evidently under significant work pressure, it is not shown that the LPA responded to the applicant's specific attempts at application stage to either resolve any issues or narrow any issues of dispute. Instead, the LPA state that it was open to discussing the acceptability of the proposal with the applicant through its pre application services, which would have provided an opportunity for constructive engagement between both parties.
42. The applicant argues that the pre-application service would not have reconciled the differences between the LPA's interpretation and his interpretation of the outline planning framework and the definitions of reserved matters. That being so, the appeal would not have been avoided. Moreover, as I have found the LPA's interpretation to be correct, it follows that it did not act unreasonably in that regard.
43. I note the costs decision referred to by the applicant in respect of No 14 Preston Road⁷ but that is not a direct precedent as stated because that was an appeal against non-determination, where the PPG advice differs⁸. Moreover, it is unlikely that the appeal would have been avoided altogether, as the LPA's concerns regarding the layout of the rear garden and car parking remain. Nevertheless, whilst issues could have been narrowed at pre-application stage, better communication when specifically sought at a lengthy application stage on fairly straightforward matters would likely have narrowed the issues by removing objections relating to the effect on the EIECA and internal living conditions.
44. I appreciate that the PPG states that it is at the discretion of the LPA whether to accept changes to an application, to determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted⁹. However, to refuse to accept changes, which do not materially alter the proposal, during a determination period well-beyond the prescribed period, would be unreasonable.
45. Having regard to the advice in the PPG, I therefore find that the LPA failed to provide reasonably requested information, when a more helpful approach would probably have resulted in the issues to be considered at appeal being narrowed, thus reducing the expense associated with the same.
46. This amounts to unreasonable behaviour by the LPA, which has led to the applicant incurring unnecessary expense having to pay an agent to prepare and submit the parts of his appeal dealing with the effect on the EIECA and internal living conditions.

Application C Costs Order

47. 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 Council of the London Borough of Croydon shall pay to Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd), the costs of the appeal proceedings described in the heading of this

⁷ Costs application in relation to Appeal Ref: APP/L5240/W/22/3306049

⁸ Paragraph: 048 Reference ID: 16-048-20140306

⁹ Paragraph: 061 Reference ID: 14-061-20140306

decision, limited to those costs incurred in preparing the parts of his case dealing with the first reason for refusal and the second reason for refusal insofar as it relates to internal living conditions/floor space.

48. The applicant is now invited to submit to the Council of the London Borough of Croydon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Application D

Reasons

49. It is evident from the emails submitted in support of the application that the applicant will have been understandably frustrated and disappointed with the LPA's handling of the application, including validation delays, requests for information and a determination beyond the prescribed period. However, the PPG advises¹⁰ that costs cannot be claimed for the period during the determination of the application.
50. I note that during the application stage, the applicant brought to the LPA's attention a costs decision relating to 14 Preston Road. However, that decision was made in the context of an appeal against the failure of the Council to issue a notice of its decision within the prescribed period. I fully appreciate that the applicant in this case sought to engage with the LPA instead of making such an appeal, nevertheless, the advice in the PPG¹¹ for appeals against non-determination is not applicable in this case.
51. The applicant refers to ease of remedy, but the parties are evidently divergent on the planning merits, and it is unlikely that the appeal could have been avoided with a shorter validation period or a determination within the prescribed period. It is also unlikely that issues would have been substantively narrowed through greater engagement during the course of the application, save for matters relating to the porch and internal space standards.
52. Moreover, it will be evident from my decision that I have found in favour of the LPA in that the appeal should be dismissed. It follows that I do not find unreasonable behaviour in terms of unduly preventing or delaying development that should clearly have been permitted.
53. Despite appearance and layout being reserved for future consideration, it is not unhelpful for the LPA to have highlighted in its officer report that the indicative application drawings were unacceptable, insofar as they show the loss of the original entrance porch, so that the applicant will have been aware that would be a matter to be addressed at reserved matters stage. However, the correct approach would then be to explain that in principle the issue could be resolved by way of condition, rather than for it to form part of a reason for refusal.
54. The appeal site falls within the EIECA so the LPA, like me, has a statutory duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or

¹⁰ Paragraph: 033 Reference ID: 16-033-20140306

¹¹ Paragraph: 048 Reference ID: 16-048-20140306

appearance of that area. Because of that duty, I have significant concerns over the appropriateness of an outline application for considering such development in a conservation area, particularly where appearance is a reserved matter. Nevertheless, the application was accepted on the basis of scale only, so it amounts to unreasonable behaviour for the design of the porch to form part of the reasons for refusal, and the LPA has been unable to produce evidence to substantiate why it should. The applicant has therefore had to incur wasted expense in addressing that issue at appeal.

55. However, on the issue of the lightwell, I have found in favour of the LPA, for the reasons explained in my appeal decision. Although layout was not before the LPA, scale was. Allowing the appeal would therefore grant planning permission for the basement building with front and rear lightwells to the height, width and length shown in the plans. The scale of the lightwells therefore clearly fall within the matters to be considered and does not overstep the remit under the outline planning framework as argued.
56. Although the applicant states that either one of the lightwells could have been omitted at reserved matters stage, that would be inconsistent with the description of development which specifically refers to the “creation of new light-wells at the front and rear of the building”. As the outline permission is the planning permission, whatever is contained in the description of development would be permitted.
57. It follows, that the LPA’s decision to refuse the application because of the effect of the proposed lightwells on the character and appearance of the area and EIECA, does not amount to unreasonable behaviour within the context of the examples set out in the PPG.
58. Whilst I agree greater communication during the application process would have been helpful, it is unlikely, given the differing views, that discussions on potential landscaping measures to mitigate the harm arising from the lightwells, would have overcome the LPA’s concerns, so as to narrow the issues at appeal. The LPA also point out that the applicant did not take the opportunity for constructive engagement through its pre-application service, although based on experience the applicant evidently has a dim view of the same.
59. The supporting Planning Statement and the description of development given in the application form describe works to create four self-contained flats. Neither say ‘up to 4 flats’ or imply flexibility on the number of units proposed. The applicant states that he could reasonably have proposed a configuration of only two units at appeal stage, but again that would be inconsistent with the description of development and any planning permission which would be granted. Moreover, such a scenario is unlikely given that the building can already be lawfully used for two flats.
60. The key consideration is whether an acceptable development as described in the proposal could be devised based on the evidence provided, including any illustrative or indicative plans. Therefore, whilst only layout was before the LPA, that does not obviate the need to demonstrate that the property is capable of accommodating four flats without any unacceptable planning harms.
61. I appreciate that the applicant was willing to demonstrate that acceptable living conditions could be achieved at reserved matters stage, but it would be too late

- then, if that was found not to be the case; planning permission would already have been granted for four dwellings.
62. In that context, given that one unit would occupy the basement and another the roof space, it is not unreasonable for the LPA to want to be satisfied that they were capable of meeting minimum floor to ceiling height standards, as part of its considerations as to whether the building is capable of accommodating the proposed number of units.
63. I appreciate that the elevations show datum floor levels but that shown for the basement is not 59.5m as stated, it is 60m. Although the ground floor above is shown as 62.3m, the information does not provide internal ceiling heights. That is clearly critical because a significant amount of the 2.3m available would be needed for the structural floor between the two storeys. Therefore, based on that information, the LPA was clearly correct to be concerned about the basement floor to ceiling heights because it would not be possible for the minimum standards to be achieved. There appears to be a recognition of that as the amended appeal plans show a deeper basement of 59.5m, giving that additional 500mm to accommodate the height of the floor structure.
64. Moreover, given the slope of the roof, it is not realistic for the LPA to have to estimate whether the headspace standards would be achieved, just from knowledge of the floor and ridge level. The applicant argues that because the second floor has an internal floor area of 41m², it is sufficient for a one person, one bedroom studio flat and that the loft space was not required to accommodate four flats. However, the description of development includes “the construction of a new small dormer window in the loft at the rear of the property to create 4 self contained flats”.
65. The LPA’s inclusion of inadequate floor to ceiling heights as part of the second reason for refusal was not therefore unreasonable. Whilst the LPA could have requested sections at application stage, it was evidently refusing the application for other reasons as well. Once the applicant provided section details at appeal, the Council withdrew its objection on this issue. I appreciate the points made over missed opportunities for constructive engagement but as pointed out by the LPA, the applicant, for his part, did not engage in pre-application discussions.
66. Similar considerations apply to the issue of outlook. If the LPA were being asked to approve four units, including one at basement level, it is not unreasonable for it to be satisfied, even with layout being reserved, that the scheme is capable of being designed to ensure adequate outlook, having regard to the proposed scale of the lightwell.
67. I have noted the applicant’s reference to the appeal decision concerning No 87 Addiscombe Road¹², but just because outlook is deemed to be acceptable in one location, does not mean that conclusion automatically applies to other locations. It is inevitably a matter of planning judgement. I do not therefore find unreasonable behaviour on this issue, within the context of the examples set out in the PPG.
68. The principles described above, are also applicable to the provision of external amenity space. Nevertheless, the reason for refusal should state that it has not

¹² Appeal Ref: APP/L5240/W/23/3322248

been demonstrated that the scheme is capable of meeting the relevant standards, thereby reflecting the reasoning set out in the officer report, rather than assert that inadequate provision would be made. Even so, the rebuttal of the former would likely be similar to that of the latter, so in reality the associated costs at appeal are unlikely to materially differ, and the applicant did not demonstrate, until appeal stage, that the scheme was capable of meeting the relevant space standards.

69. As noted, allowing the appeal would grant planning permission for the basement building with front and rear lightwells to the height, width and length shown in the plans. Given the significant length of the basement, it is not unreasonable to require it be demonstrated that sufficient light would reach the habitable rooms, particularly those positioned towards the middle of the building. Daylight and sunlight were not therefore irrelevant matters as stated.
70. Again, as per the above, just because daylighting was found to be acceptable in the appeal concerning No 87 Addiscombe Road, it does not necessarily mean that it is acceptable at the appeal site. It is inevitably a matter of planning judgement based on the particular circumstances of the case.
71. I note the applicant's arguments that daylight and sunlight assessments cannot be definitively made until the layout of a development is established, and that is a reserved matter in this case. Nevertheless, that does not absolve the applicant of demonstrating that a layout is capable of being designed to achieve acceptable levels of light if planning permission was to be granted for a basement, to the scale shown.
72. The LPA's reason for refusal reflects that, insofar as it refers to insufficient evidence to demonstrate adequate light, so is not speculative as suggested. Rather, it is abundantly clear through objective analysis of the illustrative scheme presented in support of the application, that acceptable levels of light in the centre of the basement would not be achieved. Consequently, the applicant has had to present a very different configuration at appeal stage to demonstrate that a scheme could be designed, thereby supporting the LPA's concerns. Moreover, I do not consider that the LPA can be criticised for not envisaging the acceptability of such a diminished scheme to the applicant, where the number of bedrooms is reduced from three to one and a significant amount of floor space in the middle of the basement is left blank.
73. It is asserted that it is not the responsibility of an applicant to demonstrate at outline stage that reserved matters issues could be addressed at the reserved matters stage. I disagree. Unless it is demonstrated that issues of importance are capable of being resolved at reserved matters stage, then planning permission should not be granted. That does not negate the purposes of reserving matters because, in principle, the flexibility on how they would finally be achieved, would remain.
74. I note the applicant's general submissions over how the LPA deals with outline planning applications, but my focus must be on the case which is subject to the associated Appeal D.
75. In that regard, the concerns expressed by the applicant are indicative of the inappropriateness of making an outline application in cases such as this, where fine judgements are required.

76. The applicant further asserts that settled case law dictates that unless a LPA can unequivocally demonstrate that overcoming an objection at reserved matters stage is categorically impossible, such matters cannot form the basis for a refusal. However, I have not been provided with any case law references which set such a high threshold.
77. There was a difference of opinion from the outset whether the application should be accompanied by an arboricultural impact assessment (AIA) to consider the impact of the scale of the proposed development on the large mature tree at the rear of the site, which has a high amenity value and makes a positive contribution to the character and appearance of the area and the EIECA.
78. After challenging the LPA's request for a AIA, the application was validated on the basis of plans plotting the tree and its root protection area (RPA), rather than with an AIA or even a tree survey.
79. Nevertheless, the LPA's officer report questions whether the tree had been correctly plotted and highlights that an arboricultural survey, written in accordance with British Standard BS5837:2012, had not been submitted to demonstrate how the tree would be considered in the planning process (particularly given the scale and siting of the rear extensions and excavation works), and protected from harm in any construction phases. In the absence of this information, the LPA felt unable to assess the impact on the tree, and that is essentially reflected in its fourth reason for refusal.
80. The applicant argues that, in compliance with both BS5837:2012 and the LPA's validation checklist, a method statement, tree protection plan, and AIA are not required because there are no proposed works within the RPA. It is stated that such information is only necessary when works are proposed within the RPA.
81. However, the applicant has not drawn my attention to where in the BS5837:2012, that is stated. It does say, in paragraph 6.1.1, that a precautionary approach towards tree protection should be adopted and any operations, including access, proposed within the RPA should be described within an arboricultural method statement in order to demonstrate that the operations can be undertaken with minimal risk of adverse impact on trees to be retained. However, that does not obviate the need to consider matters outside of the RPA. Indeed, the BS5837:2012 refers to areas beyond the RPA and additional precautions outside of the exclusion zone, given the potential for activities outside of the RPA to have an unacceptable effect on trees to be retained.
82. As set out in my appeal decision, the layout plans provided show that although proposed scale of the rear lightwell would fall outside of the RPA, its construction would likely require works or activities towards its outer extent. Again, as set out in my appeal decision, I am satisfied that potential harm could be avoided by a tree protection plan and appropriate working methods in accordance with BS5837:2012, secured by way of condition. Nevertheless, given the proximity of the lightwell to the RPA and the importance of the tree to the EIECA, the LPA's position was not unreasonable.
83. Nevertheless, for the reasons explained, I find that the LPA has failed to produce evidence to substantiate its first reason for refusal insofar as it relates to the design of the entrance porch. That amounts to unreasonable behaviour by the LPA, which

has led to the unnecessary wasted expense of the applicant having to pay an agent to prepare and submit the parts of his appeal dealing with the same.

Application D Costs Order

84. 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 Council of the London Borough of Croydon shall pay to Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing the parts of his case dealing with the entrance porch.
85. The applicant is now invited to submit to the Council of the London Borough of Croydon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Application E

Reasons

86. The applicant concedes that a clerical error was made in selecting 'An Existing Use' instead of 'Existing Building Works' in the application form and that the LPA rightly point out the contradiction between that selection and the application statement, which sought a LDC in respect of existing works. Nevertheless, the applicant is critical of the LPA for not seeking clarification on this issue and primarily refusing the application on that unintended discrepancy, and in the general manner of its determination.
87. The applicant states that the LPA had ample opportunity to address and clarify the apparent discrepancy and that the mistake was sufficiently evident and was further substantiated during the planning officer's site visit, when he says discussions explicitly confirmed the application's focus on the lawfulness of retaining specific fixtures within the bedrooms (cabinets, worktops and sinks) and not the existing use. Despite this, it is argued that the LPA's refusal to engage constructively and seek clarification exemplifies a departure from cooperative conduct expected in the planning process, thereby justifying a claim for costs.
88. The LPA however dispute that such discussions took place and its concerns over the application's ambiguity are not unfounded or unreasonable in the circumstances explained. In the same context, I fail to see why the Council acted unreasonably by not arriving "at common ground by the time of writing their appeal statement".
89. In any case, whilst I agree a helpful approach would have been to seek clarification from the applicant, the PPG explains that an application needs to describe precisely what is being applied for and the land to which the application relates and that without sufficient or precise information, a LPA may be justified in refusing a certificate¹³. The PPG also clarifies that it is the applicant who is responsible for

¹³ Paragraph: 005 Reference ID: 17c-005-20140306

providing sufficient information to support an application¹⁴. Having regard to that advice, the issues highlighted with the application do not therefore amount to unreasonable behaviour on the part of the LPA.

90. PINS wrote to both the applicant and the LPA on 28 November 2023 explaining that it had come to its attention that there is an extant enforcement notice on the appeal site which appeared to be the same development as that subject to the LDC appeal, and, if that were the case then it is possible that s191(2)(b) and s285(1) of the 1990 Act would come into effect. Comments were therefore sought from both parties as to whether the breach cited in the notice and the LDC application are the same, and any possible effect of s191 on the appeal.
91. The LPA's response to the same cannot reasonably be construed as introducing a new reason for refusal. In any case, as explained in my decision, it is appropriate that I consider any relevant fresh evidence advanced at appeal as the LDC provisions are to enable an objective decision based on the best facts and evidence available when the decision is taken.
92. Regardless of the provisions of the GPDO¹⁵ and s55(2)(a)(i) of the 1990 Act, the LDC sought is, for the reasons explained in my appeal decision, clearly in contravention of the requirements of an enforcement notice in force at the time of the application. The appeal had no reasonable prospect of succeeding on that issue alone. The Council's decision to refuse to grant a LDC was therefore well-founded. It follows that the Council has not prevented or delayed development which should clearly have been permitted, as argued.

Conclusion on Application E

93. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Application F

Reasons

94. The first reason for refusing the application subject to Appeal F, is that insufficient information had been provided to satisfy the LPA that "the existing interior physical alterations would not constitute development" within the meaning of s55 of the 1990 Act.
95. In that regard, the supporting planning statement refers to cupboards that resemble kitchen units along with countertops and sinks resembling kitchen sinks and kitchen counter tops in each of the maisonette bedrooms. To dispel any ambiguity relating to the units, the appeal statement sets out with "explicit clarity" the specific units and their installed locations within each bedroom of the maisonette, despite asserting that it is not a requirement for this type of application.
96. The applicant argues that the LPA has disregarded the PPG on constructive engagement. However, the paragraphs¹⁶ referred to do not, in the manner suggested, encourage LPAs to assist applicants in identifying the information required for a LDC. Rather, those paragraphs state that such applications must be

¹⁴ Paragraph: 006 Reference ID: 17c-006-20140306

¹⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015

¹⁶ Paragraphs: 005 Reference ID: 17c-005-20140306 and 006 Reference ID: 17c-006-20140306

accompanied by sufficient factual information/evidence for a LPA to decide the application and that an application needs to describe precisely what is being applied for and that without sufficient or precise information, a LPA may be justified in refusing a certificate.

97. The PPG also states that precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it¹⁷.
98. Therefore, if an application seeks to confirm the lawfulness of existing fixtures, it is not an unreasonable expectation to be provided with specific details of those fixtures, including their position.
99. In contrast to the application documents, the appeal statement provides plans highlighting the location of the fixtures, pictures of the same as well as dimensioned CGIs. With no prior knowledge of the site and its planning history, that information was critical to my understanding of the LDC sought, whereas that understanding would have been much less clear based on the initial application documents.
100. The applicant argues that the LPA had opportunity to request specific details and, whilst I agree that would have been more helpful, the PPG advice is clear in that the onus lies with the applicant for providing sufficient information. Although the PPG states that a LPA always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land, that part of the advice is not shown to be applicable here.
101. In principle therefore it would not be unreasonable for the LPA to refuse the application on the basis that it considered that insufficient information had been provided.
102. The applicant is critical of the LPA for relying on observations made during its site visit in August 2023, some three months before the application was submitted. I appreciate the application was concerned with existing works, which, according to the application form, were substantially completed on 1 January 2022, so the relevancy and accuracy of the information used to inform the LPA's decision would not have changed by the time of the application. Nevertheless, if the LPA were conducting a site visit in August 2023, it is unclear how much attention would have been paid to the fixtures subject to the later LDC application. I therefore agree that a site visit should have taken place at the time of the application, particularly if the LPA felt it did not have sufficient clarity regarding the nature of the works.
103. Moreover, the second reason for refusal states that the existing operations referred to in the application appear to constitute a contravention of the requirements of an enforcement notice in force. Whilst it does not necessarily follow that contradicts the first reason for refusal, it is nonetheless likely that the Council would have been sufficiently clear on the nature of the LDC sought due to its knowledge of the property and its associated planning history, particularly the enforcement notice, which specifically requires the removal of the fixtures.
104. I therefore find that the LPA has failed to produce evidence to substantiate its first reason for refusal, relating to insufficient information. Although for the reasons

¹⁷ Paragraph: 010 Reference ID: 17c-010-20140306

explained below the appeal would not have been avoided, that would have narrowed the issues to be addressed.

105. Based on the second reason for refusal I have found the LPA's decision to refuse to grant a LDC to be well-founded. It follows that the LPA has not prevented or delayed development which should clearly have been permitted, as argued. In that regard, it does not matter that the fixtures do not amount to development requiring planning permission; they are clearly in contravention of the enforcement notice in force at the time of the application, so cannot be lawful.
106. I sympathise that the applicant missed his opportunity to appeal against the enforcement notice but s285(1) states that the "validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought."
107. The applicant is critical of the LPA for not inspecting the premises or otherwise investigating compliance with the enforcement notice requirements. However, the application was submitted in November 2023, by which time the applicant states that the kitchen units had been removed and reinstalled as storage units without cooking facilities. Therefore, putting to one side the benefits of a site visit in respect of the first reason for refusal, even if the LPA investigated compliance at the time of the application, as suggested, the only physical change it would likely have seen is the absence of cooking facilities. It is not explained how the LPA would have been able to discern that the other fixtures had been removed and then reinstated as they were before. It would have undoubtedly appeared to the LPA, that the enforcement notice had not been complied with, insofar as the fixtures that should have been removed, appeared to remain. It is simply not enough just to remove a hob and a microwave to comply with the very clear and specific requirements of the enforcement notice.
108. Whilst the applicant is critical of the LPA for not requesting additional documentation on compliance, the onus lies with the applicant to make his case, and, despite now being aware of the compliance concerns, no such additional documentation has been provided at appeal stage either.
109. In that regard, it should have been obvious to the applicant that to argue that he had complied with the notice in the terms described would have appeared highly improbable and that evidence would need to be collated to prove that he did, particularly given he was shortly going to rely on that version of events for the purposes of the appeal. Of course, it is not compulsory that he collate such evidence, but that would clearly be the sensible and logical thing to do in the circumstances, not least because the evidential burden rests with him to make his case on the balance of probabilities. Instead, no compliance evidence has been provided.
110. The PPG does not, as suggested, make clear that an applicant's assertions must be taken as fact unless the LPA has contrary evidence. The applicant references the PPG as stating¹⁸ that where the LPA "has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the

¹⁸ Paragraph: 006 Reference ID: 17c-006-20140306

applicant's evidence alone is sufficiently precise and unambiguous." However, that omits the first part of the paragraph which states "In the case of applications for existing use...", so is not directly applicable in this case. In any event, I have found the applicant's own version of events to be less than probable.

111. In any case, as explained in my appeal decision, s181(1) of the 1990 Act provides that compliance with any of the requirements contained in an enforcement notice shall not discharge the notice. Under s181(3), if any development is carried out on land by way of reinstating or restoring buildings or works which have been altered in compliance with an enforcement notice, the notice shall be deemed to apply to the buildings or works as it applied before they were reinstated or restored. The requirements of an enforcement notice thus have an enduring effect. If it is complied with but there is a later breach of the requirements, s181(1) and (3) mean that remains enforceable under s179. Consequently, reinstating kitchen cupboards and a sink cannot be lawful as enforcement action may be taken in respect of them.
112. I appreciate that the LPA did not raise the issue of the enforcement notice in its refusal of the application subject to Appeal E, but it is evident from that decision it considered that the LDC should not be granted as the application was deemed ambiguous and insufficiently clear as to what was being sought as lawful. It is not the same as being clear of what the application sought and then not including the enforcement notice in its reason for refusal.
113. Indeed, the applicant conceded that a clerical error was made in selecting 'An Existing Use' instead of 'Existing Building Works' in the application form and that the LPA rightly pointed out the contradiction between that selection and the application statement, which sought a LDC in respect of existing works.
114. The applicant seeks to highlight that a critical requirement, when introducing a new reason for refusal, is a cogent explanation of how the updated facts or application materials differ from what was previously before the Council. In that regard, the LPA says that the second reason for refusal was raised in response to information provided in support of the application, subject to Appeal F, and is therefore appropriate.
115. Although that response fails to identify the initiating information, the applicant identifies two purported minor differences between the applications, namely addressing the mistake on the application form for the first application, and that when the second application was submitted, the fixtures had been removed and physically and materially repurposed and re-instated as storage cabinets. That latter difference is clearly related to the requirements of the enforcement notice.
116. The applicant has drawn my attention to case law regarding consistency and reasonableness, however, in the context of a fresh LDC application, rather than a planning application, and the circumstances described, the LPA did not act in an unreasonable manner by not determining similar cases consistently and there is no basis for estoppel and legitimate expectation. Nor do I find that the LPA has acted contrary to, or not followed, well-established case law.
117. Rather, for the reasons explained in my appeal decision, the LPA was entirely correct to have refused the application on the basis that the LDC sought would constitute a contravention of an enforcement notice then in force. It would actually have been remiss of the Council not to have included that as a reason for refusal.

Moreover, it seems to me that the applications were made with the requirements of the enforcement notice in mind because it is unlikely, under normal circumstances, that retaining internal cupboards, worktops and sinks would amount to development requiring planning permission.

118. The applicant refers to a series of eight refused applications at the site as suggesting a pattern of intransigence and baseless reasoning on the part of the LPA. However, I have considered six appeals afresh on the basis of the evidence before me and my own site visit, and concluded five should be dismissed.
119. Nevertheless, for the reasons explained, I find that the LPA has failed to produce evidence to substantiate its first reason for refusal for Appeal F. That amounts to unreasonable behaviour by the LPA, which has led to the unnecessary wasted expense of the applicant having to pay an agent to prepare and submit the parts of his appeal dealing with the same.

Application F Costs Order

120. 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 Council of the London Borough of Croydon shall pay to Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing the parts of his case dealing with the first reason for refusal.
121. The applicant is now invited to submit to the Council of the London Borough of Croydon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Richard S Jones

INSPECTOR