



Costs Decision

Site visit made on 24 September 2025

by **E Catcheside BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 October 2025

Costs application A in relation to Appeal A Ref: APP/L5240/W/25/3368320 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 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 the Council to grant planning permission for single storey extension, basement excavation, loft conversion, and conversion of 2 maisonettes into 8 person sui generis HMO.
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Costs application B in relation to Appeal B Ref: APP/L5240/W/25/3369814 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 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 the Council to grant planning permission for change of use from 2 maisonettes to a Sui Generis House in Multiple Occupation for a maximum of 7 occupants.
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Decisions

Application A

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

Application B

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

Preliminary Matters for Costs Applications A and B

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.
4. 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 a procedural or substantive award of costs being granted against a local planning authority (LPA). The applications are advanced on both of these grounds.
5. The applicant makes statements in relation to perceived procedural flaws in the Council's decision-making process, and I have been provided with numerous

pieces of case law in that respect. It is not for me to form a view on whether or not the Council's decisions were lawful. However, I have had regard to the court judgements provided insofar as they are relevant to my consideration of the Council's behaviour during the appeal process.

Reasons

Application A

6. The procedural grounds for the application are that the LPA prolonged the proceedings by introducing a new reason for refusal, and that it provided information that is shown to be manifestly inaccurate or untrue.
7. The substantive grounds for the application are: that the LPA prevented a development which should clearly be permitted; failed to produce evidence to substantiate each reason for refusal on appeal; made vague, generalised or inaccurate assertions that are unsupported by objective analysis; acted contrary to well-established case law; and persisted in objections to a scheme which an Inspector has previously indicated to be acceptable.
8. The appeal scheme was refused planning permission by the Council's Planning Sub-Committee (the PSC) against the advice of its planning officers. However, the Officer's Report (OR) clearly sets out the planning history of the site; and it refers to the fallback positions, the relevant development plan policies, and the other considerations which include the Conservation Area Appraisal and Management Plan (CAAMP). I do not find reason to conclude that members of the PSC had not read the OR; and the fact that some of these matters were not discussed in detail at the meeting does not mean they were disregarded in the Council's decision.
9. The site has a complex planning history and, as I have set out in my appeal decision, it is well-established in case law that fallback positions are relevant considerations that should be taken into account¹. However, there is no convincing evidence that the Council did not understand the relevance of the fallback positions or that they were not considered. Indeed, the PSC sought clarification on, and openly discussed, the relevance of the fallback positions prior to reaching its decision. The reason for refusal is sufficiently clear in that it refers only to the proposed use of the building, rather than the size and layout of the property or the proposed extensions, for which there are fallback positions.
10. The refusal of the scheme on heritage grounds undoubtedly came as a surprise to the applicant given that no harm to the East India Estate Conservation Area (EIECA) had been identified in previous planning and appeal decisions on this site. However, whilst the courts have reinforced the desirability for consistency in decision-making², it does not follow that previous decisions are 'binding'. The Council was entitled to take account of other information, in addition to the CAAMP, in its assessment of the effects of the proposal on the EIECA and it has substantiated its concerns to an acceptable degree in its statement. That the Council ascribed more weight to the effects of the proposed use of the building by

¹ The Queen on the application of Zurich Assurance Limited trading as Threadneedle Property Investments v North Lincolnshire Council [2012] EWHC 3708 (Admin) and The Queen on the application of Angus Bates v Maldon District Council [2019] EWCA Civ 1272.

² Including: North Wiltshire DC v SSE & Others [1993] 65 P. & C.R 137; Baroness Cuberlege of Newick and Patrick Cumberlege v SSCLG & Others [2017] EWHC 2057 (Admin); St Albans City and District Council v SSCLG & others [2015] EWHC 655 (Admin); The Queen (on the application of The Midcounties Co-operative Limited) v Forest of Dean District Council [2017] EWHC 2056 (Admin); and

multiple households than was the case in previous decisions on this site does not, in and of itself, amount to unreasonable behaviour.

11. I have read that some members of the PSC voiced concerns about the proposal which did not ultimately end up as refusal reasons. However, the open discussion between members on all aspects of the proposal is a necessary and important part of the democratic decision-making process, and I am not persuaded that there were factual inaccuracies or considerations that led to unreasonable behaviour. As will be seen from my appeal decision, I have come to a different conclusion to the Council on the effect of the proposal on the EIECA. However, the issue at hand is ultimately one of planning judgement, and I do not find the Council's reasoning to be contrary to established case law or unsupported by objective analysis³.
12. It is unfortunate that the Council's decision led to an unexpected refusal reason from the applicant's perspective. However, the applicant was aware of the refusal reason when the appeal was lodged; and no additional reasons have been introduced by the Council during the appeal process. Consequently, I do not find the Council's behaviour has prolonged the appeal proceedings. Moreover, as will be seen from my decision, there are other harms arising which have led to the dismissal of the appeal. Consequently, the proposal is not a scheme that should clearly have been permitted.
13. Overall, and for the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary and wasted expense has not occurred and therefore the application for a full award of costs is refused.

Application B

14. The procedural grounds for the application are that the LPA showed a lack of cooperation with the applicant, and that it provided information that is shown to be manifestly inaccurate or untrue.
15. The substantive grounds for the application are: that the LPA prevented a development which should clearly be permitted; failed to produce evidence to substantiate each reason for refusal on appeal; made vague, generalised or inaccurate assertions that are unsupported by objective analysis; acted contrary to well-established case law; and persisted in objections to a scheme which an Inspector has previously indicated to be acceptable.
16. There was correspondence between the parties during the course of the planning application, including in respect of the timescales involved. Moreover, whilst it can be good practice to do so, it is not incumbent on the Council to discuss its concerns with applicants before decisions are made. Nonetheless, in this case the Council did provide advance notice of its impending decision to refuse planning permission. Therefore, I do not consider that the Council showed a lack of cooperation.
17. As I have set out in respect of Appeal A, previous decisions, including appeal decisions, are not legally binding. Whilst the desirability for consistency is well-established in case law, the Council is not precluded from taking an alternative approach where it explains its reasons for doing so. Furthermore, in the case of Appeal B, the Council reasonably and necessarily took account of its Appeal A decision to refuse a large HMO on this site.

³ South Bucks District Council and another v Porter (FC) [2004] UKHL 33

18. The reasons for refusal on the decision notice are reasonably clear, precise, specific and relevant to the application and are further substantiated in the Council's appeal statement. Therefore, I do not find the approach to be inconsistent with court judgements on this matter⁴. The references on the decision notice to Policies DM18 and SP4 of the Croydon Local Plan (2018), and Policy HC1 of The London Plan (March 2021), are entirely relevant given that the policies include provisions relating to heritage assets.
19. The Council acknowledges that the CAAMP does not preclude the conversion of properties. However, the Council did not act unreasonably in taking other factors, including those requiring subjective judgement, into account when assessing the effect of the proposal on the character and appearance of the EIECA. It is clear to me that the Council's concerns relate to perceived changes to the site and the area that would arise due to the proposed use of the property by several individual households, and not to the size or layout of the property or the identity of its future occupants. Therefore, the evidence does not corroborate the applicant's claim that the Council's decision was based on matters that would be inconsistent with case law⁵. As will be seen from my decision, I have formed a different view to the Council in respect of the effect of the household composition on the EIECA. However, it does not follow that the Council's judgement on this matter was fundamentally flawed or lacking in reasoned analysis.
20. The Council has clearly considered the relevance of the fallback position and has not advanced the loss of a small family home as a reason for refusal on this basis. Moreover, whilst I have disagreed with the Council in respect of the effect of the proposal on the EIECA, I have dismissed the appeal for other reasons. Consequently, this is not a proposal that should clearly have been permitted, and the Council did not behave unreasonably by refusing planning permission.
21. Overall, and for the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary and wasted expense has not occurred and therefore the application for a full award of costs is refused.

E Catchside
INSPECTOR

⁴ St Albans City and District Council v SSCLG & others [2015] EWHC 655 (Admin)

⁵ Lisa Smith v SSHULC & Others [2022] EWCA Civ 1391; Charmain Moore and Sarah Coates v SSCLG and Others [2015] EWHC 44 (Admin); and Shanice Khayyat and Dora Ibrahim v Westminster City Council [2023] EWHC 30 (Admin).