
Costs Decision

Site visit made on 11 March 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2020

Costs application in relation to Appeal Ref: APP/P3610/W/19/3242731 The Lodge, West Street, Ewell, Surrey KT17 1XU

- 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 Liam McLaughlin for a full award of costs against Epsom & Ewell Borough Council.
 - The appeal was against the refusal of planning permission for demolition of the existing detached house and construction of two houses and four flats.
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Decision

1. The application is dismissed.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. In this case, the refusal of planning permission by the Council's Planning Committee was contrary to an officer recommendation on the application to grant permission. Whilst elected members are not obliged to follow their officers' advice, PPG indicates that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal. The applicant is seeking a full award of costs in relation to both procedural and substantive matters.
4. On the procedural ground, the applicant points out that the Council failed to supply documents with its appeal questionnaire and that it did not submit a Statement of Case to defend its decision contrary to indication on the appeal questionnaire. The Council sent a copy of the questionnaire to the original agent for the proposal, not the appeal agent. This was an administrative error, but the Council claim the appeal agent did confirm receipt of the questionnaire. The Council prepared a Statement of Case, but this was not accepted by the Planning Inspectorate as out of time. The applicant has had to rely on documents already submitted for explanation of the Council's refusal reasons. Procedural irregularities have occurred in respect of both alleged concerns. But whilst this may have resulted in some inconvenience for the applicant, there is no evidence to indicate that there have been consequential delays in the appeal process or that the applicant has incurred unnecessary or wasted expense. The applicant's appeal statement had already been prepared and the applicant was able to submit final comments in respect of residents' concerns on the appeal.

5. The applicant's costs final comments add the charge that the Council has used its opportunity in submitting a costs rebuttal to include wider justification for its decision to refuse permission. The length and detail of the Council's rebuttal, particularly on the design reason for refusal, provide some verification for this assertion. The Council's behaviour has not followed set procedure in this respect but neither has it resulted in delay or wasted expense. The applicant has also been afforded opportunity to comment on the matters raised.
6. In relation to the substantive ground, the applicant contends (1) that the refusal reasons are unsupported by any objective analysis, (2) that the Council has failed to properly apply local and national planning policy documents, (3) that the Council failed to apply an overall planning balance exercise in respect of the proposal's benefits, (4) that the Council ignored the advice of its own highway authority, (5) that the decision to refuse was inconsistent with the recent permission for 3 houses on the adjacent site designed by the same architect and (6) that unreasonable behaviour is also demonstrated by the informative to the decision notice referencing application of the presumption in favour of sustainable development.
7. It will be evident from the main decision that my findings in relation to both refusal reasons are that they are not vague, generalized or make inaccurate assertions about the proposal's impact. The reasons are specific in detailing the harm that would arise and, in both instances, this is cross referenced to relevant planning policies. Regarding the massing and detail of the proposal, the officer report sets out that there would be conflict with development plan policies relating to heritage, townscape and design and that this would amount to less than substantial harm in relation to assessment procedures set out in the National Planning Policy Framework (the Framework). I reached a similar judgement. The first refusal reason clearly sets out the harm in relation to the report's findings and the Committee's conclusions.
8. In respect of parking, the report noted that the proposal would not meet the Council's standards but considered this acceptable in the light of the applicant's parking survey and the site's sustainability credentials. That is a judgement with which the Committee disagreed. However, the second refusal reason clearly references harm in relation to amenity considerations and specifies relevant development plan policies concerning this issue. The Council has not failed to apply relevant planning policy documents.
9. The officer report to the Committee sets out the benefit of an increase from 1 to 6 new dwellings and explained the importance of housing supply in that the Council is not able to demonstrate a five year supply of housing land. It applied a balancing exercise of harm identified in the report to benefits arising from the proposal; this resulted in the recommendation to grant planning permission. The minute to the Committee decision showed that Members were cognitive of the proposal's benefits and of the Council's housing shortfall and that they deliberated on balance of harm to benefits. The minute shows that Members also noted that the highway authority had not objected to the proposal. Their consultation reply had not been ignored. Members were entitled to conclude that the balance on relevant planning issues lay in refusal of the proposal rather than in approval if the refusal reasons could substantiate this. In my judgement they do so.

10. The officer report made several references to the extant permission on the adjacent site and that the proposal would be a second phase to development of the two sites. The report was supportive of the general design approach but also included references to the reservations expressed by the Council's Design and Conservation Officer regarding increased massing and poorer appearance compared with the first phase. The decision to refuse permission was not inconsistent with the recent permission on the adjacent site as the reservations on the second phase were clearly expressed and informed the judgement that there would be harm to the character or appearance of the conservation area.
11. The informative attached to the decision notice to refuse permission states that the Council has assessed the proposal against all material considerations and that regard has been had to the presumption to approve sustainable development where possible as set out in the Framework. The officer report clearly sets out a balance in relation to heritage issues, refers to the Council's housing need and to the Housing Delivery Test result published in 2019. In its conclusion it sets out the presumption in favour of sustainable development in the Framework. Members would have been aware of these issues in taking their decision to overturn the officer recommendation. Whilst the minute does not set out a stepped judgement in relation to the presumption in favour of sustainable development, there is evidence to indicate that they considered all relevant planning policy matters including the presumption in favour of sustainable development. This does not amount to unreasonable behaviour; nor does reference to application of the presumption in the informative.

Conclusion

12. The Council's behaviour in respect of procedural matters has not been exemplary but these shortcomings do not warrant an award of costs. Notwithstanding the overturning of the officer recommendation and the absence of a statement of case, the Council's appeal submission has been able to provide substantiation of its reasons for refusal of the application. I conclude that the Council's actions have not resulted in unnecessary or wasted expense, as described in PPG. An award of costs, to cover the expense incurred by the applicant in contesting the appeal, is therefore not justified.

Rory MacLeod

INSPECTOR