



Costs Decision

Site visit undertaken on 24 May 2022

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 30th June 2022

Costs application in relation to Appeal Ref: APP/J0350/D/22/3294404 138 Spackmans Way, Slough SL1 2SB

- 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 Ahmed against the decision of Slough Borough Council.
 - The appeal was against the refusal of planning permission for a three storey side extension.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. The applicant has put forward nine grounds for unreasonable behaviour which relate to both procedural elements (relating to the process) and substantive (relating to the issues arising from the merits of the appeal). I turn to the grounds below.
4. Ground 1 relates to the planning officer utilising 'numerous planning policies' to justify each ground of refusal with 'most of the ones used are irrelevant/unapplicable.' The appellant has not identified which policies they consider to be irrelevant. As noted in the appeal, all policies listed in the reason for refusal were relevant to the determination made. Taking the above into account, I do not consider that unreasonable behaviour in line with the PPG has been demonstrated in relation to this matter.
5. Grounds 2 and 7 relates to the consideration given to the pre-application advice and the side extension permitted on the opposite side of the road. No.140 Spackmans Way is referred to in the Planning Officer's Report under the section 'Site and Surroundings' where the officer refers to this neighbouring extension as being historic and not considered to be good design under today's policy position. With relation to the pre-application advice, whilst in many occasions advice does reflect the application process, the advice is given without prejudice to the consideration of the application. The application is referred to third parties and it is also noted that the submitted pre-application advice letter was not completely satisfied with the scheme that was submitted.

6. I also note further comments from the appellant who has looked up the LinkedIn profiles of Council Officers in order to justify whether one officer would have more knowledge than another officer. It would not be appropriate for me to comment upon experience of officers and their ability to make the same judgement as planning does involve some opinion and objective assessment. Additionally, from my experience some Councils also sign off their pre-application advice notes from the Development Manager rather than from the officer who wrote the advice. It is also noted that a different name is placed on the pre-application advice letter as to who to contact regarding this advice which may also be the author rather than the signatory. Either way, I find that the Council did not fail to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. The Council had reasonable concerns about the impact of the proposed development which justified their decision. Taking the above into account, I do not consider that unreasonable behaviour in line with the PPG has been demonstrated in relation to this matter.
7. Grounds 3, 8 and 9 refer to similar issues around the Council not working with the appellant, such as offering opportunities to submit amendments to the scheme where the appellant believes the Council have an obligation to do this. Whilst it is good practice for a Council to seek amendments to resolve matters that are outstanding, they are under no legal obligation to seek amendments. The only legal obligation the Council are under is to make a decision on a planning application based upon the information they have in front of them which they felt that there was sufficient grounds to refuse the application. Taking the above into account, I do not consider that unreasonable behaviour in line with the PPG has been demonstrated in relation to this matter.
8. Ground 4 relates to the officer not visiting the site as there was incorrect referencing in the Officer Report to the site having an area partially in grass. Whilst I have no evidence in the appeal documents to demonstrate whether the Officer did or did not visit the site, the reference to the grassed area to the front of the property was not an overall determinant to the reasons of refusal which was more related to the design of the extension when taking into account the context and existing building. Saved Local Plan of Slough (LPS) Policies H14 and EN3 seek improvements to the existing environment and the officer did show evidence of applying these policies to seek improvements to the situation presented in the plans which showed a dominance in vehicular parking to the front of the property. Taking the above into account, the officer was justified in their opinion to seek improvements to the area to the front of the property. I do not consider that unreasonable behaviour in line with the PPG has been demonstrated in relation to this matter.
9. Ground 5 refers to the case officer not taking into account an existing planning permission which meant that the 3 car parking spaces to the front of the dwelling already had planning consent which is a material consideration to the acceptability of the scheme when it came to highway safety considerations in terms of visibility. As discussed in the appeal, if the officer and highways team had considered previous planning consents they would have likely come to a different conclusion with regards to highway safety. The PPG deems that unreasonable behaviour can arise when refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead. Whilst I agree that the Council were unreasonable in utilising the

highway ground as a reason for refusal based upon available evidence, this reason for refusal did not prevent the appeal from taking place given that there were a further three reasons for refusal and the appellant needed to respond to these in any event. Additionally, the second test of unreasonable behaviour relates to wasted expense. The defence of the highway reason consisted of a photocopy of the planning approval along with four short paragraphs without any need for further technical reports. As such, I do not consider that both tests of unreasonable behaviour in line with the PPG has been demonstrated in relation to this matter.

10. Ground 6 relates to the measurement of 100Sqm of garden space from the Residential Extensions Supplementary Planning Document (SPD) being utilised to justify that the garden size after the proposal was inappropriate, where this guidance was related to garden sizes after rear gardens, rather than specifically within the section relating to side gardens. As discussed within the appeal letter, I do not consider the Council Officer was 'negligent' as it is a logical outcome to apply the guidance from the side extension section given that this is related to size of land according to dwelling size, rather than the type of extension. In any event, the application was not refused on the basis of non-compliance with the SPD, but it was refused on the basis of non-compliance with policy which sought to understand the size, shape and use of the garden which was found to be undersized, regardless of the reference to square metres in the SPD. Taking the above into account, I do not consider that unreasonable behaviour in line with the PPG has been demonstrated in relation to this matter.
11. In my own assessment of the scheme, I have found that three of the reasons for refusal were sufficiently justified by the Council and that the Council has not acted unreasonably in this regard in their assessment of the scheme. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

J Somers

INSPECTOR