The Planning Inspectorate

Costs Decision

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2022

Costs application in relation to Appeal Ref: APP/K3605/D/22/3300550
14 Lodge Close, Stoke D'Abernon, Cobham, Surrey KT11 2SG

- 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 Anthony Gallagher for an award of costs against the decision of Elmbridge Borough Council.
- The appeal was made against the refusal of an application, Ref 2022/0536, for part two/part single-storey rear/side extensions, single-storey front extension, front canopy, rear dormer windows, rooflights, alteration to fenestration and replacement roof and gable to front projections following partial demolition of existing dwelling and removal of chimney stacks at 14 Lodge Close, Stoke D'Abernon, Cobham, Surrey KT11 2SG without complying with condition no. 3 attached to planning permission Ref 2020/2658, dated 18 October 2021.

Decision

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

Reasons

2. Planning Practice Guidance (guidance) 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 Appellant argues that there has indeed been unreasonable behaviour by the Council. The Appellant notes that although recommended for approval by Officers, the planning sub-committee set forth on an unsubstantiated and unsupported course of refusal. It is put that there were no reasonable grounds for the Council to refuse the application to remove the applicable planning condition.

4. The case is made that in the determination of application 2022/0536, officers did not apply sufficient weight to the similarities of the proposal to the original application (ref:2019/1909). The size and position of the window in question does not materially differ in terms of what was allowed originally. It is underlined that an authority should not prevent or delay development which should clearly be permitted or fail to produce evidence to substantiate each reason for refusal. More weight should have been attached to the professional views given by the Council's Planning Officer and the content of applicable policies and guidance.

5. The Appellant states that the Council were warned that if it disagreed with the merits of the proposal to remove the condition, then a planning appeal would

be pursued and that an application for an award of costs would be sought. However, it is put that Members were very heavily influenced by the amount of local objection, and noted that two of the Members of the Planning Committee did declare at the beginning of the meeting that they were acquainted with one of the objectors.

6. In summary the Appellant considers that the Council was unreasonable in refusing the application and the costs of the appeal should have been avoided and hence are now claimed.

7. For its part the Council underlines that Councillors are, with sound reasons, at liberty to decide planning applications otherwise than in accordance with their Officers' views. In this instance it is put that the Members of the sub-committee gave clear planning grounds for arriving at a different conclusion to the Officer recommendation during the meeting. Members had previously attended a site visit and viewed the relationship between the two properties for themselves. They felt that the built form required the application of Condition 3 to make the development acceptable. The case is put that as the development was completed at the time of the sub-committee site visit, Members could fully assess its form, view differences from the originally approved scheme (2019/1909) and consider the impact of the relevant window and other changes from the original application at the site.

8. The Council states that the Members of the sub-committee gave clear planning grounds for arriving at a different conclusion to the Officer recommendation.

9. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, a partial, award of costs.

10. In this instance development was not prevented or delayed but I do fully recognise that an appeal process can be worrying and fee consuming and that professional assistance comes at a cost. However, I would say that the Council has given reasoning for the subjective judgement it reached. In my opinion it was not unreasonable for Members to consider the specific matter which was before them and not be completely fettered by an earlier proposal which had not been constructed and was not going to be. As an observation, it is fair to say that the house-to-house relationships at this point are somewhat unusual in terms of estate layout and the question of residential amenity via possible over-looking here is consequently not clear cut.

11. I surmise that the Members had familiarity with the site, considered a comprehensive report and dealt with the plans before them, along with all other material considerations including substantive representations, and reached a not wholly illogical decision on the condition in question. It must be said that cases like this will always have a degree of subjectivity.

12. I am satisfied that this scheme was judged on its own merits and I am not at all persuaded that there was inconsistency or irregularity in approach. Obviously, the Members did not follow the advice of the Officers. Nevertheless, to my mind the refusal reason is clear and sets out unequivocally the concerns of the Council and cross-refers to applicable policy and guidance sources.

13. As it happens, I do not agree with the conclusion reached by the Council on the matter of the disputed condition. However, I would nevertheless defend its wording and assertions in the round as not being unsubstantiated and its actions throughout the process as not being irrational.

14. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR