The Planning Inspectorate

Costs Decision

Site visit made on 8 June 2023

by J Evans BA(Hons) AssocRTPI

an Inspector appointed by the Secretary of State

Decision date:13 July 2023

Costs application in relation to Appeal Ref: APP/J0350/D/23/3321170
26 Farnburn Avenue, Slough SL1 4XT

- 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 Kasar Mahmood for a full award of costs against Slough Borough Council.
- The appeal was against the refusal of planning permission for the construction of a single storey front and side extension, part single, part two storey rear extension and loft conversion with 2no rear dormers and 2no front rooflights.

Decision

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

Reasons

2. 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. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses.

3. The appeal proposal (the current appeal) follows the refusal of an earlier application[1] (the earlier application) at the appeal site, which was refused by the Council on character and appearance grounds only. The earlier application was subject to an appeal[2] (the earlier appeal) which was also dismissed on character and appearance grounds only.

4. The applicant is seeking a full award of costs against the Council. The applicant considers that the local planning authority have behaved unreasonably on substantive reasons with regard to the three reasons for refusal, on the basis that in reaching their decision, the Council have not had due regard to the decision of the Inspector in the earlier appeal, the decision reached by the Council in the earlier application and have now raised objections to matters that were determined as acceptable in the earlier appeal and the earlier application.

5. The PPG sets out that examples of unreasonable behaviour by local planning authorities which may result in an substantive award of costs include: Not determining similar cases in a consistent manner; Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector

[1] P/19514/002 refused on the 26 July 2022
[2] APP/J0350/D/22/3305564 dismissed on 27 January 2023

has previously indicated to be acceptable; and 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.

6. The earlier appeal at the site included a proposed two-storey side extension. From my review of this decision and the submitted plans, it is clear to me that the Inspector's concerns with the earlier appeal related specifically to the effects of this two-storey side extension on the character and appearance of the appeal property and the surrounding area. This is set out in detail in paragraphs 4 and 5 of the Inspector's decision. At no point in the decision does the Inspector raise objections to other components of the appeal proposal.

7. The Inspector also makes clear in his conclusion through paragraph 7 that the appeal should be dismissed 'for the reasons outlined above,' including the reasons as set out in paragraphs 4 and 5. I also note that at the start of paragraph 4, before focusing on his concerns with the side extension, the Inspector states that 'I agree with the Appellant ,Mr Mahmood, that the design and finishes of the resulting enlarged dwelling would be generally sympathetic to those of the existing house and its immediate neighbours.'

8. The current appeal has reduced the side extension to a single storey scale, seeking to address the concerns raised by the Inspector regarding the potential for a terracing effect, due to the then proposed two-storey form occupying the width of the appeal site. Otherwise, the current appeal largely reflects the scheme that was considered under the earlier appeal.

9. The Council refused the current appeal on three grounds. Reason for refusal 1 stating that the 'ground and first floor rear extension and ground floor front/side extension by virtue of its size and design and width would result in a bulky, over-dominant and insubordinate extension which would not be in keeping with the character and appearance of the host dwelling or the surrounding area.'

10. Reason for refusal 2 states that the 'proposed roof enlargement and conversion to a gable roof, in terms of its height and form would result in a contrived roof form and loss of architectural merit to the principal elevation, which is considered to result in a substantial adverse impact on the character and appearance of the existing dwelling and surrounding area.'

11. Reason for refusal 3 sets out that the Council were concerned with the 'scale, massing and depth' of the 'ground floor side and rear extension', which they considered 'would have a substantial harmful impact to the amenity of occupiers of No.24 Farnburn Avenue, resulting in a loss of light within the property and an unacceptable increase in overshadowing and overbearing impact on the garden area.'

12. As the current appeal proposal reduced the two storey extension to a single storey form to respond to the Inspector's concerns regarding a terracing effect, I can understand why the applicant would have expected that this would have satisfactorily addressed this point, as the terracing effect raised in the earlier appeal had been removed. Further, as the earlier appeal decision raised no wider concerns regarding the effects upon the character and appearance of the area, I can understand the applicant's view that a revised design that closely

reflected all other components of the earlier decision, would not result in objections from the Council on such matters.

13. Further, I do not agree with the conclusions set out in the Planning Application Report that the Inspector did not comment upon the harm or not of the wider elements of the earlier appeal scheme. The Inspector outlines in detail his concerns, that being the two storey form of the side extension as per paragraphs 4 and 5 of the earlier appeal decision. As I have outlined above, the Inspector made clear that his reasons for dismissing the appeal was based on what was set out in his decision.

14. Therefore, I find it difficult to understand why the Council raised the objections they did in their reason for refusal 1, bearing in mind the conclusions of the earlier appeal decision. The components of the proposal that have raised objections from the Council in reason for refusal 1 are either the same or respond to the conclusions of the earlier appeal. I am therefore of the view, with regard to reason for refusal 1, that the Council have persisted in objections to components of a scheme which an Inspector has previously indicated to be acceptable and have prevented development which should clearly be permitted.

15. I am more persuaded with the Council's view regarding the visibility of the side elevations of the proposal as set out in reasons for refusal 2, bearing in mind the current appeal proposal would enable greater visibility of the proposed eastern elevation, than the earlier application. The Council have set out in their Planning Application Report the substance for their arguments on this matter. Whilst I have disagreed with the Council on these conclusions in my appeal decision, I find there is no unreasonable behaviour on the part of the Council in regard to reason for refusal 2.

16. Turning to the reason for refusal 3, the current appeal involved a reduced form to the side extension fronting towards No. 24, and otherwise was consistent with the earlier application which the Council did not refuse on the grounds of the effects upon the living conditions of existing or future occupiers of neighbouring properties. Due to the fact this matter was not raised in the earlier application or the earlier appeal, it would be reasonable for the applicant to assume that this would not be a matter raised by the Council in their consideration of the current appeal as the form of the proposal adjacent to No. 24 has reduced from what was considered previously.

17. The Planning Application Report does not explain what has changed since the earlier application was determined in July 2022 and why a different view contrary to this earlier decision was reached. I therefore consider, with regard to reason for refusal 3, that the Council have not determined similar cases in a consistent manner, by raising objections to a reduced form and scale of components of a scheme which they had previously indicated to be acceptable.

Conclusion

18. The Council's conduct in relation to the first and third reasons for refusal was unreasonable.

19. In light of the above analysis, I have found unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is warranted.

Costs Order

20. 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 Slough Borough Council shall pay to Mr Kasar Mahmood the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in commenting on the matters specifically related to the defence connected to the Council's first and third reasons for refusal.

21. The applicant is now invited to submit to Slough Borough Council, 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.

J Evans

INSPECTOR