



Costs Decision

Hearing held on 11 July 2023

Site visit made on 12 July 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Costs application in relation to Appeal Ref: APP/K3605/W/23/3315071 10 Arnison Road, East Molesey, Surrey KT8 9JJ

- 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 IPE Arnison Road Limited for a partial award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for extensions and alterations to increase the number of flats from 4 flats to 11 flats incorporating three-storey side extension, three-storey rear extension incorporating rear balconies and lower ground floor, bin and cycle stores, front boundary wall, associated parking and landscaping following demolition of existing single-storey rear/side projection.
-

Decision

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

Preliminary Matter

2. The application was originally made for a full award of costs. The applicant subsequently confirmed that they no longer wished to contest the grounds in relation to the Council's first reason for refusal concerning affordable housing review mechanisms, and asked that I consider a partial award of costs in respect of the second, third and fourth reasons for refusal. I have considered the application accordingly as seeking a partial award of costs.

The submissions for IPE Arnison Road Limited

3. The costs application was submitted in writing. In response to my questions at the Hearing, the applicant did not argue that it was unreasonable of the Council to require updated flood risk information, but considered that this information should have been requested at application stage, particularly given the length of time between the submission and determination of the application.

The response by Elmbridge Borough Council

4. The response was made in writing. In response to my questions at the Hearing, the Council advised that the length of time between the submission and determination of the application was partly a result of proactive working with the applicant to overcome issues with the proposal.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('the PPG') advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has

directly caused unnecessary or wasted expense in the appeal process. The PPG goes on to explain that a local planning authority is at risk of an award of costs if it behaves unreasonably with regard to procedural matters or the substance of the matter under appeal. Examples given of unreasonable behaviour include 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, as well as failing to produce evidence to substantiate each reason for refusal on appeal, or making vague, generalised or inaccurate assertions which are unsupported by any objective analysis.

6. The Council determined the appeal application over a year after it was first submitted. The Council advised that the delay was partly a result of proactive working with the applicant to overcome issues with the proposal, referring to viability negotiations and time to resolve design issues, but it was nevertheless relatively lengthy. That said, I have been provided with copies of correspondence between the Council and the applicant which indicate ongoing discussion and communication during the determination period. On the basis of the information that is before me, I cannot agree with the applicant's assertion that the Council lacked proper cooperation. While I consider the overall delay to the determination of the planning application to be unfortunate, it does not in my judgement amount to unreasonable behaviour.
7. The Council's third reason for refusal alleges inadequate provision of parking that would increase on-street parking stress detrimental to the amenities of local residents. The applicant produced surveys of levels of existing parking in the area. However, the most recent daytime surveys submitted as part of the planning application had been carried out at a time when some COVID-19 restrictions were still in place, and it was not unreasonable for the Council to consider that they may not be representative. I also share the Council's concerns about the classification in the parking surveys of the narrower stretch of Arnison Road where parking requires vehicles to mount kerbs as 'unrestricted parking', albeit that it would have been helpful if this had been raised at an earlier stage rather than in response to the additional surveys submitted as part of the appeal. The Council has not produced surveys of its own, but the onus is on an applicant to demonstrate that a proposal is acceptable, and representations made by interested parties on the application show that pressure on on-street parking is a local concern. Furthermore, the demand for parking resulting from the development can only be a prediction. I have found that the appellant's suggested levels of daytime parking demand are likely to be understated, and that there would be some demand for on-street parking increasing existing pressure.
8. I acknowledge that Surrey County Highway Authority did not object to the proposal, but its comments state that assessment of the application was on safety, capacity and policy grounds. It is not clear that it gave consideration to any effects of parking on the amenities of residents, and I consider the Council was entitled to have regard to this as an additional matter which would not necessarily relate directly to highway safety or capacity. The effect of any additional on-street parking on the amenities of local residents is also a matter of planning judgement. I find overall that the Council's evidence adequately substantiates this reason for refusal, and as my appeal decision sets out, I agree with the Council that there would be harm.

9. Irrespective of reductions made from a previous proposal on the site, assessment of whether the development would be overbearing to neighbouring occupiers and its effect on their living conditions which is the basis of the second reason for refusal is also a matter of planning judgement. In my view, the Council's written evidence and the further explanation provided during the Hearing adequately substantiates its position, explaining clearly the basis for its concerns according to the circumstances of the site despite suggested compliance with guidance in the Design and Character Supplementary Planning Document in relation to the 45 degree splay line. Moreover, I concur with the Council that there would be unacceptable harm to the living conditions of neighbouring occupiers.
10. The Council's evidence clearly acknowledges that it cannot demonstrate a 5 year housing land supply and the benefits of the proposal, and I find that it has adequately explained its position that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. The applicant disagrees with the Council's findings that there would be harm and its overall balancing of the benefits against this harm, but that is not evidence of unreasonable behaviour. I am satisfied that the Council's evidence sufficiently justifies its refusal of the planning application. Consequently, I do not consider that this is a case where there has been unreasonable delay to a development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
11. I agree with the applicant that it would have been helpful for the Council to have raised flood risk as an issue and allowed the appellant an opportunity to address it before determining the application, particularly because the applicant could not be sure that additional flood risk information would be accepted as part of any appeal. However, there is no dispute between the parties that the requirement for flood risk information was in itself reasonable, and from the information before me it seems that the applicant would have needed to prepare a new Flood Risk Assessment in any case. I have also found that the Council's decision to refuse permission was well-founded, and so the appeal could not have been avoided. Even if I were to find that it was unreasonable of the Council to not have requested additional information before determining the application, I am not therefore persuaded that this would have caused the applicant to incur unnecessary or wasted expenditure in the appeal process that would not otherwise have been required.
12. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a partial award of costs is refused.

J Bowyer

INSPECTOR