The Planning Inspectorate

Costs Decision

by D Cramond BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2023

Costs application in relation to Appeal Ref: APP/C3620/D/23/3323278
5, The Garstons, Bookham, Leatherhead, Surrey, KT23 3DT

- 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 Tim Spencer for an award of costs against the decision of Mole Valley District Council.
- The appeal was made against the refusal of application, Ref MO/2023/0025/PLAH, which sought planning permission for the erection of a part first floor extension, changes to the roof to create a new first floor habitable accommodation within the altered roof space along with new roof lights.

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. Unreasonable behaviour may be either procedural or substantive.

3. The Appellant argues that there has indeed been unreasonable behaviour by the Council. In particular the Appellant puts forward three main points. Firstly, that the Officer Report contains vague, generalised and inaccurate assertions about a proposal's impact, which are not supported by objective evidence, and which are contradicted by the information contained within the Built Up Area Character Appraisal. Secondly, that established case law has not been followed. Thirdly that the Council has determined similar cases in an inconsistent manner.

4. The Appellant helpfully explains the thinking in respect of the second matter in that the scheme was *not*, in summary:

   - determined in accordance with the Development Plan, unless material considerations indicate otherwise;
   - considered in the context of the Development Plan as a whole;
   - assessed via the sensible meaning of the policies, having had regard to their full intent;
   - viewed properly with regard to the intent and objectives of the policies cited in the reason for refusal and without regard to the assessment of the area in the Built Up Area Character Appraisal (BUACA) SPD; and

- weighed against the fall-back options which are afforded through the "Permitted Development" (pd) rights; and it *was*
- assessed via unduly elevated selected policy limbs of the Development Plan policies.

5. The Council argues that the detailed accurate officer report contains an assessment of the character of the area, with relevant policies summarised and an assessment of character made. A site visit was made, submissions assessed and planning documents considered. It is explained why the extension would be unacceptable and this does not contradict the BUACA. The sensible meaning of the relevant policies has been applied. With regard to a fall-back position no certificate of lawfulness had been granted and it had not been established what pd rights are present or could be built out; and pd restrictions would limit scope in any event. It is put that development that would be allowed under class B could be preferable to the current proposal in any event. The various decisions referred to are generally not all close to the application site and do not have a similar layout or street scene. These cases are not sufficiently similar to draw a comparison including those sited on The Garstons.

6. The Council argues that the reason for refusal is clear, precise and unambiguous and whilst the decision to refuse permission was a matter of judgement it is supported by Development Plan policies. In summary it is put that there has been no unreasonable behaviour on the Council's part having regard to guidance or legislation.

7. 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.

8. I recognise that an appeal process can be time and fee consuming and that professional assistance comes at a cost.

9. On the Appellant's first point, I have studied the Officer's Report and I found it to be comprehensive, well-written, logically set out and not running contrary to reasonable practice, pertinent guidance or adopted policies. Design-based decisions will always have a degree of subjectivity but it was made clear to the reader why planning permission was refused. This was followed up in a soundly written reason for refusal within the Decision Notice and applicable policies were correctly cited.

10. Turning to the second point; I note that the Council does not really touch on the matter of case law other than perhaps a brief, and in my view well-based, commentary on fall-back and its (non) role. For my part I regret to say that I find the Appellant's five other points summarised in the bullets above as little more than casting around without any real target or argued case. It is self-evident that in any single report a Council Officer writes cannot explicitly 'tick off' every one of these specific case law factors but I see nothing which suggests to me that there were any breaches of established good practice or procedure. The principles of reaching a sound decision are based on these principles being a starting point, in the background, and 'going without saying'. From what I have seen and read it appears that this all happened satisfactorily in this case.

11. On the final point of the Appellant – inconsistences, or precedent – I would entirely take the arguments made by the Council here. The other sites and proposals are simply different situations. It will be noted that in my Appeal Decision I set out why, despite all the cases cited by the Appellant, I found none which would reasonably point to a green light for the appeal scheme. I am satisfied that there has not been inconsistency. It seems to me that the Appellant's application was dealt with fairly and on its own merits.

12. In summary, in my opinion the Council's wording and assertions in the round are not unsubstantiated, proper practice and procedure have been followed, and its actions throughout the planning assessment process were not irrational.

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

D Cramond

INSPECTOR