



Costs Decision

Site visit made on 28 May 2024

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Costs application in relation to Appeal Ref: APP/K3605/W/23/3328038 83 Oaken Lane, Claygate, Easher KT10 0RQ

- The application is made under the Town and Country Planning Act 1990, section 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Inderpreet Singh for an award of costs against Elmbridge Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling and erection of detached two-storey replacement dwelling.
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Decision

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

The submission by the applicant

2. A timeline has been provided setting out a chronology of the planning applications, information submission and communications relating to the site. It is contended that some of the five reasons for refusal relating to a previous planning application for the site could have been addressed within the application process had the case officer been willing to engage with the agent.
3. Subsequent to this, pre-application advice was sought from the Council offering three options for a revised design. A zoom meeting was held to discuss these options. It is put forward that the Council's case officer offered at the meeting a preference for Option 2 with alterations and that Option 3 would be the safest option in terms of design. The Council's written pre-application response expressed a different position to that expressed in the meeting, stating that further refinements to Option 2 would be required and altered its preference to Option 3. There was further communication with the Council in regard of Option 2 with the contemporary approach to Option 2 remaining acceptable to the Council.
4. The planning application relating to this appeal was submitted to the Council. A streetscape elevation was provided at the case officer's request. Subsequent concern was raised relating to the height and rear projection of the proposed dwelling. These had not been matters raised at the pre-application stage despite a streetscape elevation having been provided. Further email communications expressed dissatisfaction to reducing the ridge line noting discussion at the pre-application meeting and expressing concern to the inferior design of a flat 'cap' roof. There were also issues relating to the 45-degree angle test relating to natural light and neighbouring properties. Other further email communications related to these matters.

5. The applicant provided 3D visuals to help assist with the assessment of the proposal. Although the case officer declined the evidence in support of the original ridge line and rear elevation line, he asked for the line of the truncated hipped roof to be raised to a level that the case officer himself marked up on an elevation of the proposed building. Further email correspondence provided revised drawings even though the applicant expressed the view that these were unnecessary. The Council subsequently accepted the revised drawings. However, an email from the Council indicated that the overall design of the proposal was considered unacceptable and declared an intention to refuse the application but offering an opportunity to submit a revised design based upon the Option 3 pre-application submission.
6. Subsequently information was requested from the Council to ascertain their design and policy compliant concerns and draft wording for any reasons for refusal. The Council response was to raise concern about the overall design of the proposal, including the design of the roof, given the context of the site and suggested a more traditional approach be taken. Given the extent of previous communications with the Council this was the first indication that the local planning authority had reservations about the appearance of the design as submitted.
7. At this point concern was expressed as to how the planning application had been dealt with and posed the question as to whether Option 3 would be considered acceptable to the Council to which the case officer offered additional design feedback. Revisions based on Option 3 were submitted to which the case officer responded that following an internal review it was considered acceptable and that the roofline was acceptable. However, the applicant asked for the Council to proceed to determine the planning application as submitted and as previously amended.
8. The applicant contends that this detailed email correspondence demonstrates clear compliance with the development plan, national policy and material consideration specific to the planning application. This has prevented or delayed development which should have been permitted. The email correspondence entered into at the planning application stage failed to demonstrate any objective analysis of the proposal's impact and the officer report likewise failed in this regard, and the refusal was based upon vague, generalized and inaccurate assertions.
9. The applicant's rebuttal set out matters about which the applicant considers the Council have made inaccurate assertions but these relate specifically to considerations pertaining to the proposal (45-degree rule and perspective drawings). It is considered the Council have not considered similar cases in consistent manner. Although there is gratitude that the case officer was willing to enter into pre-application discussion, it is contended that the local planning authority failed to remain consistent to the advice they had given both at the pre-application stage and once the application was submitted.
10. In terms of this cost application, it should be noted that a request was made to see a draft officer report, before taking a decision on whether to withdraw the application or allow it to be determined in order that the applicant could proceed to appeal. This request was declined leaving no alternative but to seek a determination which could be appealed. It is clear from the e-mail trail the

appeal is the direct result of an amendment of the design insisted upon by the Case Officer.

11. The applicant contends that the local planning authority has behaved unreasonably by providing inaccurate and inconsistent advice regarding various design iterations of the proposed development which have led to a refusal of planning permission.
12. The applicant argues that in making its decision, the Council have acted unreasonably, and the applicant has been put to unnecessary or wasted expense as a result of the Council's decision.

The response by Elmbridge Borough Council

13. The applicant raises concerns regarding a lack of communication from the local planning authority about the application refused prior to the submission of the appeal scheme. However, at this point the applicant chose not to pursue the local planning authority's offer of positive and proactive engagement prior to submission through pre-application advice. In this case the proposed development was fundamentally flawed as demonstrated by the five reasons for refusal. The local planning authority did discuss with the applicant post-refusal of this application to provide further explanation.
14. Following this refusal, a pre-application advice request was submitted. The applicant contends that the local planning authority confirmed that Option 2 was an acceptable iteration. However, this is clearly not the case as confirmed within the pre-application report where a number of design improvements were recommended. Clarification provided in email correspondence following the release of the pre-application report clearly highlight the concerns already raised during the pre-application.
15. Upon submission of the planning application following pre-application discussions (the current appeal scheme), some minor modifications had been made. However, more considerable concerns raised by the local planning authority were largely ignored and remained within the scheme in relation to the design, height, appearance and the impact upon neighbours arising from the repositioning of the dwelling. This is demonstrated by the fact that the appeal scheme, as originally submitted, featured a greater ridge height than both the refused application and pre-application. This would have a similar appearance to the pre-application scheme and would have resulted in an overbearing impact upon No. 81 Oaken Lane. The local planning authority would have refused planning permission for this originally submitted scheme. These matters had been discussed in detail with the case officer and at pre-application stage.
16. Following discussions between the appellant and the local planning authority, changes were recommended to the scheme in relation to the impact upon neighbours (which the amendments addressed) and Officers also raised concern regarding the height of the proposed dwelling in accordance with the previous refusal and pre-application advice. Officers indicated to the appellant, then the applicant, a maximum height that would be acceptable. The amended plans submitted removed the top-most section of roof, which the local planning authority confirmed to the applicant had addressed the issue of height only (as demonstrated by the reason for refusal of this appeal where height was not

- listed as a concern). The amended plans were therefore accepted for full consideration and re-consultation.
17. It is an established and common procedure amongst many local planning authorities to accept amended plans for consideration and re-consultation in order to allow for a full assessment to be carried out. Following the full review of the amended plans, it was found that whilst the issue of height had been addressed, the design had been compromised as a result and a refusal was issued.
 18. The local planning authority have behaved positively and proactively through the provision of pre-application advice, extensive discussions and willingness to accept amended plans to offer the applicant an opportunity to address concerns. However, the local planning authority cannot design a proposal entirely for an applicant and must assess what is presented before them. In this instance, the local planning authority indicated a maximum height which the ridge should be capped at (figuratively) although the subsequent design put forward by the applicant was unacceptable in terms of its design.
 19. The appellant also appears to be of the view that there has been internal disagreement within the local planning authority, leading to conflicting advice. This is not the case as the concerns were raised after a full assessment and reconsultation was carried out by officers collectively. Regardless, the Council's scheme of delegation sets out the decision making process in the Borough. The decision issued is on behalf of the Council, not an individual officer.
 20. The local planning authority have further acted in a positive and proactive manner by providing feedback on the likely outcome of a planning application for the Option 3 iteration presented in pre-application. Planning permission was subsequently granted under reference 2023/2144.
 21. As such the Council contend that they have not acted unreasonably.

Reasons

22. 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.
23. It is clear that there has been extensive communication between parties. The applicant's contentions relate to the Council's conduct during the course of its considerations of the planning application and pre-application advice process. As I see it those matters said to be vague, generalised and inaccurate assertions relate to the Council's objective analysis of the proposal's impacts. However, the applicant chose to amend the proposal in the manner proposed, and in doing so, the revised scheme created different design concerns as a result. I am satisfied that the Council have clearly set out their justification for refusing the planning application within the officer's report, decision notice and statement supporting the appeal.
24. The applicant considers the Council have made inaccurate assertions specifically related to the 45-degree rule and perspective drawings, however these matters are not in contention. There is no clear indication that the proposal has not been considered in a manner consistent with other cases.

25. The applicant has expressed frustration over inaccurate and inconsistent advice provided by the Council. However, it appears to me that the Council have endeavoured to provide the applicant with design advice. Whilst the applicant, in good faith, has sought to address the Council's height concerns it is open for the Council to assess and determine whether the amendments to the planning application would make the proposed development acceptable.
26. In respect of preventing or delaying development which should have clearly been permitted, I acknowledge that the proposed development has been subject to pre-application advice and amendment in an attempt to address Council concerns. However, I do not consider the local planning authority have behaved unreasonably by providing inaccurate and inconsistent advice regarding various design iterations of the proposed development which have led to a refusal of planning permission. Rather the amendments provide, whilst clearly addressing the Council's concerns in respect of height, resulted in other design concerns.
27. The Council's conduct, by changing its position from one in which planning permission may be forthcoming to one where it would not, has clearly frustrated the applicant. Whilst the amended plans sought to address the Council's design concerns the subsequent design put forward by the appellant was unacceptable. I have come to the same conclusion in regard of the proposed development. Based upon the information that is before me I cannot conclude that the appeal would or could have been avoided.
28. The applicant contends that since the appeal has been lodged a planning permission has been granted for a development with a virtually identical roof line. Had the local planning authority accepted the original ridge height this appeal could have been avoided. However, that proposal relates to a different scheme that can and should be considered on its own merits.
29. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Nicola Davies

INSPECTOR