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## Costs Decision

Site visit made on 9 January 2017

**by Tim Wood BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 January 2017**

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**Costs application in relation to Appeal Ref: APP/H5390/W/16/3160276  
Hazel, Myrtle, Holme, Holkham, Burnham, Royston, Suffolk and Norfolk  
Houses, Sulgrave Road, London W6 7QF**

- 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 Pineapple Corporation for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
  - The appeal was against the refusal of planning permission for the construction of a single one-person flat at roof level on each of the properties.
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### Decision

1. The application for an award of costs is partially allowed, as set out below.

### Reasons

2. National Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and 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. In broad terms, the appellant suggests that the Council has been unreasonable in not following the officers' recommendation to grant planning permission and that the reasons for refusal are not justified. I shall address each of the 6 reasons in turn below.

### ***Density (Reason 1)***

4. The Council's reason for refusal refers to the fact that the proposal would result in a development exceeding the density recommendations in Table 3.2 of The London Plan and so resulting in 'overdevelopment'; no other harm is alleged in the reason. The Council's statements add to this by indicating that the issues raised by other reasons for refusal indicate an unacceptable overdevelopment.
5. The PPG refers to a requirement for Local Planning Authorities to substantiate each reason for refusal. In this respect, the Council's decision notice alleges harm as a direct result of the proposed density of the scheme and other reasons for refusal allege separate harm. The proposal would involve an increase in density, as set out in my main decision. In my view this is clearly a marginal increase in density when compared to the existing development. The London Plan indicates that density ranges should not be employed

mechanistically and that other factors will form important determining characteristics.

6. Having considered the relevant documents, it is my judgement that the Council has not applied the density range in the manner that is advised. The formulation of the reason for refusal shows that they consider that the density of the proposal, in itself, to be unacceptable. In relation to this reason for refusal, I consider that the Council has failed to substantiate a case of sufficient merit and that it has acted unreasonably.

### ***Waste/Cycle Storage (Reason 2)***

7. The Council has alleged that the existing arrangements at the appeal site for the storage of waste and recycling is inadequate. It is suggested that the under-stairs store is used in some of the properties for this purpose, along with the bins within the frontage of the site. The appellant's proposal is for additional bins to be provided to serve the proposed new flats. For their part, the appellant points out that storage of waste or recycling material in the under-stairs area is prohibited under fire/safety regulations.
8. The Council appears to accept that the provision of 2 additional bins for each of the new flats is acceptable in terms of capacity. From my observations, I consider that they could be accommodated within the frontage of the properties, along with the existing bins, without any harm to the character or appearance of the area. The Council's case in respect of this issue rests on their view of the adequacy of the existing provisions to cater for the existing flats. I do not consider that it is reasonable to expect the appellant to make good any deficiencies that may exist in the existing provision and the scheme should be judged on its provisions for the proposed development. In this context, I consider that the additional waste/recycling bins could be required and secured by the imposition of a suitable condition, if permission were granted.
9. Additionally, the Council have not disputed that the storage of waste/recycling material in the under-stairs area is prohibited. I saw at my site visit that this area is capable of storing cycles and I see no reason why a condition could not ensure such provision is made. In this instance, I consider that the Council has failed to substantiate its reason and the matters raised could have been addressed by conditions, if planning permission were to have been granted.

### ***The effects of the new stairs (Reason 3)***

10. The Plans indicate and the appellant has set out, that there would be an acceptable layout at the top floor landing, where the new staircase would be constructed. At my site visit, I was able to assess the position of the stairs and the location of the existing entrance to the existing flats. It seems clear that there would be no physical obstruction or hindrance to access as a result of the proposal.
11. The layout of the top floor landing would be very similar to the lower floors where stairs rise to higher floors and entrances to existing flats are present. I find the prospect of such a new arrangement as being consistent with the existing development and one where there would be nothing unusual or objectionable. To suggest that the stairs would be un-neighbourly and oppressive is an argument that I find to have little merit. This amounts to a

generalised assertion, not supported by objective evidence. The Council has acted unreasonably in relation to this reason.

***Character and Appearance/Conservation Area (Reason 4)***

12. I have set out in my main decision why I have agreed with the Council in relation to this reasons for refusal. Therefore, I consider that the Council has reasonably raised the issue of the effects of the proposal on the character and appearance of the Conservation Area and the area generally. I consider that the evidence submitted supports their argument and that, notwithstanding the officers' recommendation, there is a sound basis for refusal of the proposal which is adequately supported. Therefore, I consider that the Council has not acted unreasonably in relation to this reason.

***Roof Terraces (Reason 5)***

13. The proposed external roof terraces would provide an amenity area for each of the new flats. Whilst I have assessed their size to be modest and so unlikely to generate unreasonable levels of noise, some judgement is involved in assessing the likelihood of this occurring and the likely levels of use and numbers involved.
14. In my view, the Council has raised an issue which is worthy of consideration. Whilst I have not agreed with them in relation to the effects of the use of the terraces, I consider that it is not an unreasonable view to take in arguing that the resultant noise and disturbance would be unacceptable; it is simply one that I have not agreed with. Therefore, I consider that the Council has not acted unreasonably in relation to this reason.

***Water Infrastructure (Reason 6)***

15. The Council are correct to point out that Thames Water have identified an inability of the existing waste water infrastructure to accommodate the needs of the proposed development. However, Thames Water's comments refer to the possibility of a *Grampian* style condition which may requires on or off-site works to address this issue. In addition, Thames Water also refer to sustainable urban drainage and a broad aim to seek to manage as much run-off as possible on-site but also accepts that such provisions may not be feasible and that it should be dealt with as close to the site as possible. From my reading of the comments made by Thames Water, they are not advising that the absence of on-site or sustainable urban drainage measures should lead to a refusal of planning permission; nor are they advising that the other alternatives referred to would be unlikely to be achieved in this instance.
16. The suggestion of a *Grampian* style condition would mean that the development could not go ahead unless and until suitable provisions were made to address this issue. Therefore, the Council's fears that suitable measures may not be possible are unfounded as, if this were found to be the case, the development would not go ahead with such a condition in place. Therefore, I consider that a condition could adequately address concerns relating to this issue and the Council has acted unreasonably in refusing the proposal for this matter.
17. Therefore, in respect of the matters identified above, I consider that the Council has acted unreasonably and their actions have meant that the

appellant has incurred unnecessary expense. In respect of those matters only, a partial award of costs is justified.

### **Costs Order**

18. 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 the Council of the London Borough of Hammersmith & Fulham shall pay to Pineapple Corporation, the costs of the appeal proceedings described in the heading of this decision limited only to those costs incurred in relation to dealing with Reasons for Refusal numbered 1, 2, 3, and 6, as identified on the Council's Decision Notice.
19. The applicant is now invited to submit to the Council of the London Borough of Hammersmith & Fulham, 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.

*ST Wood*

INSPECTOR