

Costs Decisions

Inquiry opened on 3 May 2017

Site visit made on 9 May 2017

by David Prentis BA BPI MRTPI

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

Decision date: 28 June 2017

Costs applications in relation to

Appeal A: APP/G5180/W/16/3157888

Appeal B: APP/G5180/Y/16/3157889

Appeal C: APP/G5180/W/17/3171036

Appeal D: APP/G5180/Y/17/3171038

Sundridge Park Mansion, Willoughby Lane, Bromley BR1 3FZ

- The applications are made by City and Country Sundridge Ltd for a full award of costs against the Council of the London Borough of Bromley.
 - The **Appeal A** application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The Inquiry was in connection with an appeal against the refusal of planning permission for change of use of existing Grade I listed Mansion to 22 residential dwellings, with associated internal/external alterations and partial demolition works, rear extensions, rear car park, cycle parking and refuse/recycling provision, hard and soft landscaping (including removal of some trees), woodland management and associated infrastructure.
 - The **Appeal B** application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The Inquiry was in connection with an appeal against refusal of listed building consent for change of use of existing Grade I listed Mansion to 22 residential dwellings, with associated internal/external alterations and partial demolition works, rear extensions, rear car park, cycle parking and refuse/recycling provision, hard and soft landscaping (including removal of some trees), woodland management and associated infrastructure.
 - The **Appeal C** application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The Inquiry was in connection with an appeal against the refusal of planning permission for change of use of existing Grade I listed Mansion to 20 residential dwellings, with associated internal/external alterations and partial demolition works, rear extensions, rear car park, cycle parking and refuse/recycling provision, hard and soft landscaping (including removal of some trees), woodland management and associated infrastructure.
 - The **Appeal D** application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The Inquiry was in connection with an appeal against refusal of listed building consent for change of use of existing Grade I listed Mansion to 20 residential dwellings, with associated internal/external alterations and partial demolition works, rear extensions, rear car park, cycle parking and refuse/recycling provision, hard and soft landscaping (including removal of some trees), woodland management and associated infrastructure.
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Decision

1. The applications for awards of costs are allowed in the terms set out below.

The submissions for City and Country Sundridge Ltd

2. The applications were made in writing and may be summarised as follows. The applications are for a full award of costs relating to all 4 appeals. It was substantively unreasonable for the Council to refuse planning permission and listed building consent. Moreover, it was accepted by the Council that the appeal proposals are for sensitive and imaginative schemes which would secure the optimum viable use of the listed mansion.
3. Insofar as the first reason for refusal (Appeals A and C) refers to loss of trees, that argument was not supported by any expert evidence at the Inquiry. Moreover, the Council finally accepted that there would be a long term benefit in relation to trees. The Council did not have proper regard to the temporary nature of any impact, the benefits of the proposals for woodland management, the advice of its own tree officer or the advice of Historic England.
4. With regard to the position on Metropolitan Open Land (MOL), the Council accepted at the Inquiry that any proper assessment of whether the extension to the mansion would be a '*disproportionate addition*' would have regard to both quantitative and qualitative aspects. That exercise had not been done in the Council's evidence. At the Inquiry the Council accepted that the qualitative considerations in this case indicate that the extension would not be a disproportionate addition.
5. Moreover, even if the Council had been right to conclude that the proposals amounted to inappropriate development within MOL, it would then have been necessary to consider whether there were very special circumstances sufficient to outweigh any harm. That exercise had not been carried out. At the Inquiry the Council accepted that the proposed enhancement to the setting of the Grade I listed building would be capable of constituting very special circumstances.
6. The second reason for refusal (Appeals A and C) alleged harm to the setting of heritage assets due to road markings, signage and traffic signals. No evidence was called to substantiate those points. These would be very minor features which would not result in any harm. Even if they did result in some limited harm, the Council should have considered the overall impact on the heritage assets rather than looking at these small elements in isolation. The Council should also have weighed any such harm against the public benefits of the scheme, in accordance with paragraph 134 of the National Planning Policy Framework. Finally, the Council accepted at the Inquiry that any residual concerns it may have in relation to these matters were points of detailed design which could be addressed by way of appropriate planning conditions.
7. The third reason for refusal (Appeal A only) related to the access to the site via Willoughby Lane. The appellant had produced evidence regarding the legal rights held in respect of the access and this reason for refusal had not been maintained. Nevertheless, there had been no reasonable basis for imposing it in the first place. It was fanciful to suggest that the golf club would have any

- interest in removing adequate passing facilities along the lane. Moreover, the Council's stance was inconsistent with its decision to allow the 14 unit scheme.
8. The reasons for refusing the listed building applications (Appeals B and D) were entirely dependent on the absence of planning permission. All of the above points are therefore relevant to those decisions as well.
 9. The Council's approach to the question of viability had been unreasonable. At the committee meeting relating to Appeals C and D one of the Ward Councillors put forward his own viability assessment. This had been incorrect and had misdirected the committee. Subsequently, the Council had confirmed that it placed no reliance on this assessment as part of its case and that it accepted the appellant's evidence on viability. It logically followed that the Council had to accept that there are no known schemes with fewer units than the appeal schemes which would be viable and would secure the future of the listed mansion.
 10. Finally, the Council had insisted on the drafting of a legal agreement in respect of a woodland management plan and the relocation of parking for the Cottage. This was unnecessary and unreasonable. It was only at a late stage that the Council accepted that suitably drafted conditions would suffice.

The response by the Council of the London Borough of Bromley

11. The response was made in writing and may be summarised as follows. Elected Members of the Committee were required to exercise a series of planning judgements having regard to the evidence before them. It is reasonable to assume that they accepted the officers' conclusion that the proposals constituted inappropriate development in MOL but disagreed with the officers' conclusion that very special circumstances existed to justify the grant of planning permission. The fact that the Council's witnesses did not defend the planning judgements underpinning the first reason for refusal does not in itself demonstrate that the Members prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and any other material considerations.
12. At the end of the Inquiry, having regard to the concessions made in evidence, the Council was not able to submit that planning permission should be withheld for the reasons stated in its decision notices. Demonstrably, the Council had not sustained the evidence it produced to substantiate each reason for refusal. It was also accepted that the second reason for refusal could be overcome by way of planning conditions and, on that basis, the Council was at risk of an award of costs if it were concluded that suitable conditions would enable the development to go ahead.
13. In conclusion, it is a matter for the Inspector to decide if the exercise of planning judgement by the Members was unreasonable in all the circumstances.

Reasons

14. Planning Practice Guidance (the Guidance) states that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The application is for a full award of costs in respect of all 4

appeals. In the alternative, a partial award is sought. The application includes substantive and procedural grounds.

15. The Council's third reason for refusal (Appeal A) alleged that the long term provision of passing bays along a privately owned access had not been ensured. This reason was not pursued at the Inquiry and was not a reason for refusal in relation to Appeal C. Even so, it is necessary to consider whether it was reasonable in the first place. The access is owned by the golf club, through whose land it passes. In addition to serving the golf club, this is the sole means of access to Sundridge Park Mansion and the recent developments at Repton Court and Stable Villas. Although Sundridge Park Mansion is currently vacant, it has previously been used as a hotel and conference centre. The Council did not dispute that this was a use which generated more traffic than the appeal schemes would generate. Indeed, the Council did not dispute any of the technical assessments submitted with the application relating to highway safety and traffic generation.
16. The access was found to be acceptable in the context of the approved 14 unit scheme. In the absence of any evidence that the additional units associated with the appeal scheme would result in significant harm, it was inconsistent to advance a reason for refusal relating to the access. Moreover, the reason appears to be based upon a fear that the golf club would take unilateral action to make the access work less well. I understand that one passing bay has in fact been removed in the course of recent works to the lane. Nevertheless, there are several passing bays and presumably the golf club was satisfied that the access as a whole would operate in a satisfactory way. The Council has not given any explanation as to why the golf club would, in future, choose to make its own access harder to use. I conclude that the Council has not shown that this reason for refusal was justified.
17. The second reason for refusal (Appeals A and C) alleged that road surfacing and markings, signage and traffic lights would be harmful to the setting of Stable Villas and Sundridge Park Mansion. This view was reached notwithstanding the comprehensive supporting information submitted with the applications, the views of the Council's own officers and the views of Historic England. No explanation was given as to why a contrary view was taken. No evidence was called in support of this reason for refusal. Indeed, at the Inquiry the Council accepted that any concerns it had could be addressed by way of planning conditions.
18. Plainly the second reason for refusal was unsubstantiated and unreasonable in its own terms. Moreover, the fact that it was relied on until well into the course of the Inquiry says something about the Council's approach to the case as a whole. On any objective analysis the matters said to be of concern would be minor features in an inconspicuous location. In my appeal decisions I have found that they would cause no harm whatsoever to the settings of the heritage assets. However, even if there was thought to be some small element of harm here, that should have been balanced against the compelling heritage benefits of the proposals. To my mind the second reason for refusal indicates an unwillingness to view the merits of the proposals in the round.
19. The first reason for refusal (Appeals A and C) makes a passing reference to loss of trees. No landscape or arboricultural witness was called by the Council and no objection in relation to trees was maintained at the Inquiry. The nub of the

first reason for refusal was a finding that the proposals would amount to inappropriate development in MOL. Before turning to that matter it is convenient to deal with the question of viability.

20. It can be seen from the minutes that viability was raised in the committee's discussions on both Appeals A and C. For Appeal A, the view was expressed that it was not necessary to increase the number of units from that previously approved because the 14 unit scheme was viable. It is not possible for me to say how much weight that carried amongst the committee as a whole. The more important point, to my mind, is that at the Inquiry the Council expressly accepted that the 14 unit scheme would not be viable. That is a significant point given the Council's acceptance that it is important to find a new use for the listed mansion and that a scheme of conversion to flats would represent the optimum viable use.
21. The Council's finding that the proposals would amount to inappropriate development in MOL was in accordance with the officers' report. In my appeal decisions I have concluded that the proposals would not amount to inappropriate development. Nevertheless, I consider that the Council had a respectable case to make on this point. The National Planning Policy Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on to say that substantial weight should be given to any harm to the Green Belt. The effect of the London Plan is to apply the same level of protection to MOL.
22. The requirement to demonstrate very special circumstances is a high policy test and determining whether or not a particular proposal passes that test is a matter of judgement for the decision maker. Bearing in mind the nature of that judgement, it seems to me that there will be very few cases where a finding that very special circumstances do not exist would amount to unreasonable behaviour. That said, there is a very particular set of circumstances in these cases:
 - Sundridge Park Mansion is an important Grade I listed building which has been vacant since 2014. Finding a new use which will secure the long term preservation of the building is a matter to which considerable importance and weight should be attached
 - it is agreed that in principle a scheme of conversion to flats would represent the optimum viable use of the building
 - it is agreed that an approved scheme of conversion to 14 flats would not be viable and that no other viable schemes are in prospect
 - the appeal schemes are based on a thorough and detailed understanding of the significance of the heritage asset, have been amended to address the concerns raised by Historic England and are supported by the Council's officers
 - the appeal schemes would preserve the special interest of the listed mansion and would enhance its setting. They would also enhance the park which is a designated heritage asset in its own right

- the Council raises no objection to the works to the listed building and does not dispute the nature and extent of the heritage benefits identified by the applicant
 - the delivery of housing would also be a benefit to which weight should be attached
 - other than the matters referred to in the second and third reasons for refusal (which were unsubstantiated) the Council did not identify any other harm in relation to heritage, landscape or any other material planning considerations
23. When the above points are brought together, they make an exceptionally strong case for concluding that there are other considerations which clearly outweigh the harm by reason of inappropriateness (notwithstanding the substantial weight to be attached to that harm). The officers' report recommended approval on the basis that there were very special circumstances. Members were not bound to follow that recommendation but they ought to have provided clear reasons for coming to a different view. There was no evidence before the Inquiry as to what those reasons were. Moreover, the Council's witness accepted that the heritage benefits of the scheme were capable of amounting to very special circumstances.
24. Having regard to all the above factors, it is my view that the Council's conclusion that very special circumstances had not been demonstrated was not a reasonable a conclusion to reach, either for Appeal A or for Appeal C, in the particular circumstances of these appeals.
25. I turn to the Council's overall conduct of the 4 applications and the Inquiry. It seems to me that this was characterised throughout by an unwillingness to consider the undisputed and significant heritage benefits of the proposals in a fair and balanced way.
26. In conclusion, the Council was unable to substantiate any of its reasons for refusal in relation to Appeals A and C. This has delayed development which should clearly have been permitted. The Council has also refused planning permission on a planning ground which is capable of being dealt with by conditions and (in respect of the access) has not determined similar cases in a similar manner. The decisions in respect of Appeals B and D related solely to the absence of planning permission so these decisions were also unreasonable. In view of these findings it is not necessary to comment on procedural matters.
27. The refusal of each of the appeal applications amounted to unreasonable behaviour which led to the applicant incurring unnecessary expense in preparing for and taking part in the appeal process. A full award of costs is therefore justified for each of the 4 appeals.

Costs Order

28. In exercise of the powers under section 250(5) of the Local Government Act 1972, Schedule 6 of the Town and Country Planning Act 1990 as amended, Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Bromley shall pay to City and Country Sundridge Ltd the costs of the appeal proceedings described in the heading of

this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

29. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Prentis

Inspector