



Costs Decision

Site visit made on 11 January 2018

by A A Phillips BA (Hons) DipTP MTP MRTPI

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

Decision date: 9 February 2018

Costs application in relation to Appeal Ref: APP/R5510/W/17/3179908 38 - 40 Ducks Hill Road, Northwood HA6 2SB

- 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 Vijen Shah of Newstone Developments Ltd for a partial award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of planning permission for the erection of a three storey building to create 9 x 3-bed self-contained flats with car parking within basement, with associated parking and landscaping, installation of a vehicular crossover to front and detached summerhouse to rear, involving the demolition of the existing houses.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may 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. The appeal followed the refusal on 22 June 2017 of an application made on 3 March 2017 for the erection of a three storey building to create 9 x 3-bed self-contained flats with car parking within basement, with associated parking and landscaping, installation of a vehicular crossover to front and detached summerhouse to rear, involving the demolition of the existing houses at the appeal site. My decision which accompanies this costs decision agrees with the Council's overall assessment and dismisses the appeal under the terms set out in my decision.
4. The Planning Practice Guidance indicates that a local planning authority will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal. In this particular case the appellant contends that the Council has not acted consistently through the determination of applications Ref 71798/APP/2016/2997 and Ref 71798/APP/2017/803 and has failed to justify the first reason for refusal in the context of the development plan.
5. There is no evidence that in determining the first planning application for the development of the site under Ref 71798/APP/2016/2997 the Council was concerned about the coalescence of flatted development in the area, the over-concentration of flatted development on this part of Ducks Hill Road and

- potential resultant intensification in the residential use of the site and harm with respect to the character of the area.
6. I have concluded in my decision that the 10 per cent rule in relation to the coalescence of flatted developments is not included in the development plan and given the conclusions of my colleague Inspectors in dealing with residential schemes in the Borough I conclude that the rule is guidance only and it does not represent adopted policy.
 7. In addition, I have no evidence to justify the 10 per cent figure which seems to be arbitrary rather than based on clearly evidenced analysis. Consequently, I conclude that the 10 per cent is a material consideration which should be used in conjunction with other policies if it is determinant in deciding whether a development proposal is acceptable. In this particular case the Council has not relied solely on the rule, but in refusing permission on the grounds of the coalescence of flatted development has related the harm to issues for which there are policies which do form part of the adopted development plan.
 8. The Council itself acknowledges that the threshold of 10 per cent may not be regarded as a determining factor but claims that it relates directly to Policies BE13 and OE1 of the Saved UDP. However, as I have explained in my decision this does not make sense since neither of these have been identified in the Hillingdon Design and Accessibility Statement New Residential Layouts Supplementary Planning Document as relevant policies. I have also noted that Policy OE1 is not identified in Reason for Refusal No 1 in any case.
 9. Due to the location of the appeal site along Ducks Hill Road assessing the 10 per cent guidance is rather complicated. However, the approach taken by the Council means that sites well in excess of 500 metres away from the appeal site have been taken into consideration in determining the percentage of properties which have been converted to flats or other forms of housing. I therefore consider that sites which are not reasonably related to the appeal site have been taken into account when assessing the effect of the proposal.
 10. In these particular circumstances the approach taken by the appellant seems to be more logical and suitable as I have set out in my decision. This is because the area of search covers sites which are reasonably well related to the appeal site rather than sites in excess of half a kilometre away. Based on the appellant's Flatted Development Report and my own site observations I agree that at present only five of the properties within the search area have been developed as flats out of a total of 76 properties along the Ducks Hill Road frontage. The current proposal would take this total to seven, which would be less than the 10 per cent threshold. As such, on the basis of the guidance I conclude that there is no conflict in percentage terms.
 11. Although the Council has related the harm from coalescence to adverse impacts on the highway network on-site parking provision would be in accordance with adopted parking standards and there is no indication in the Report of the Head of Planning, Sport and Green Spaces that the development would result in a significant increase in traffic. Also, the proposed access is considered by the Council to be satisfactory and cycle parking provision is found to be acceptable. Consequently, with respect to highways safety the Council finds there to be no conflict with the development plan. Therefore, it is unclear why the Council's reason for refusal appears to me to be opposed to the assessment it has undertaken. Furthermore, no specific highway or

infrastructure development plan policies are identified in the first reason for refusal.

12. With reference to the traditional character of the area the Council has concluded that the proposal would result in harm to the established traditional character of large detached family homes. However, as explained in my decision there is a mix of types of property in the locality, including terraced houses, modern and traditional detached family properties and some flats. I conclude that the proposal would not result in harm to the character and appearance of the area. I accept their concerns even though I disagree with their conclusions. Nevertheless, to relate this issue to the wider concern about the coalescence of flatted development is unreasonable in this case given the lack of concern regarding the cumulative effects of flats in the previous application.
13. Furthermore, there is no evidence that the proposal would lead to a cumulative adverse impact on the infrastructure of the surrounding area. Indeed, any such impacts would be mitigated by the charges the Hillingdon Community Infrastructure Levy.
14. I consider that the Council has acted unreasonably and inconsistently by refusing the application for reasons not previously identified as areas of concern when dealing with the previous planning application for the site and the subsequent appeal. As a consequence of their action the appellant has incurred additional and unnecessary expense in dealing with an unexpected reason for refusal. Had this matter been a justifiable reason for refusal then logically it should have been applied to the first application 71798/APP/2016/2997, which it was not.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Hillingdon shall pay to Mr Vijen Shah of Newstone Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect to Reason for Refusal 1; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alastair Phillips

INSPECTOR