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## Costs Decision

Site visit made on 18 June 2019

**by Helen O'Connor LLB MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 August 2019**

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### **Costs application in relation to Appeal Ref: APP/T0355/W/19/3225260 Hurford House, New Road, Hurley, Maidenhead SL6 5LN**

- 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 Graham Denton for a full award of costs against Council of the Royal Borough of Windsor and Maidenhead.
  - The appeal was against the refusal of planning permission for the erection of a detached, two storey, 5-bedroom dwelling with associated garage building, parking, landscaping and new access for Hurford House.
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### **Decision**

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

### **Reasons**

2. Planning Policy Guidance (PPG) 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 expense in the appeal process.
3. The application for costs relates primarily to the third reason for refusal on the Council's decision notice dated 7 December 2018 that referred to insufficient arboricultural information having been provided. The applicant suggests that there were several earlier opportunities than the decision notice for the Council to have made any concerns it had regarding trees known. Reference is made to an earlier withdrawn planning application at the appeal site, correspondence on the planning application that is the subject of the appeal and delay in the publication of the decision notice dated 7 December 2018.
4. The PPG further advises that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, however, behaviour and actions at the time of the planning application can be taken into account. It gives an example of unreasonable behaviour as refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
5. I acknowledge that had the Council obtained comments from the tree officer at an earlier point, there would have been opportunities in correspondence prior to the decision notice itself, for the applicant to have been made aware that the Council considered the application to contain insufficient information regarding the impact on trees. Even so, a previously withdrawn planning application does

not represent a fully considered formal decision and as such, there would not have been refusal reasons established. Furthermore, as will be seen from the decision notice, there were other substantive areas of concern in relation to the impact on the Green Belt and impact on the character and appearance of the area, including the conservation area. The evidence does not show that communicating concerns with regard to trees at an earlier stage would have been likely to have resulted in a different outcome for the planning application, and so it would have been unlikely to avoid the appeal altogether.

6. I acknowledge that the 3 day delay in the publication of the decision notice may have proved frustrating for the applicant. However, it is not shown how the earlier publication of the decision notice on 7 December 2018 would have assisted in avoiding the appeal or narrowing its scope.
7. The applicant chose to test the substantive concerns at appeal, but it would have been necessary, in any event, for the applicant to prepare and provide information regarding the impact of the development on the trees. The tree report prepared was submitted to the Council on 15 March 2019 for comment, and the applicant suggests that he did not receive a response. Nevertheless, the evidence before me includes an email response from the Council dated 15 March 2019 which, in relation to the tree report, states that at least 2 weeks would be necessary to review the information. The appeal was submitted on 22 March 2019, which would have allowed a shorter time than that requested by the Council. Perhaps it is not surprising in that context, that the response to the tree report was contained within the Council's appeal statement in line with established appeal deadlines. As such, this does not reflect unreasonable behaviour by the Council.
8. The procedural guide<sup>1</sup> advises that appellants should be confident at the time they make their appeal that they are able to make their full case, and that the appeal process should not be used to evolve a scheme, this would have been applicable to the information the applicant provided in relation to trees. It will be seen from my decision that I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision, including the impact on one of the trees. It follows that the evidence does not show that a more helpful approach by the Council would probably have resulted in either the appeal being avoided altogether, or the issues being narrowed.
9. Therefore, whilst I acknowledge that the applicant will be disappointed with my decision, on the basis of the evidence presented, the actions of the Council were not unreasonable. It therefore follows, that the applicant was not put to unnecessary or wasted expense in testing the matter at appeal.

## **Conclusion**

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Helen O'Connor*

Inspector

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<sup>1</sup> Planning Inspectorate Procedural Guide to Planning Appeals, England 19 March 2019