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## Costs Decision

Site visit made on 18 February 2020

**by Andrew Smith BA (Hons) MA MRTPI**

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

**Decision date: 17 March 2020**

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### **Costs application in relation to Appeal Ref: APP/K0425/W/19/3241116 Land Rear of 38 to 48 Rectory Avenue, High Wycombe HP13 6HW**

- 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 Omnicrest Construction Ltd for a full award of costs against Wycombe District Council.
  - The appeal was against the refusal of planning permission for the erection of a 4 bed detached single dwelling with associated parking, access, amenity space and landscaping.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance 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 applicant considers that the Council behaved unreasonably by failing to engage in constructive dialogue, by having disregard to and misinterpreting factual circumstances, and by failing to properly substantiate with credible evidence its reasons for refusing planning permission. It is important to note that, whilst all parties are expected to behave reasonably throughout the planning process and actions taken at the time of the planning application can be taken into account, costs can only be awarded in relation to unnecessary or wasted expense at appeal stage.
4. The applicant has submitted a series of emails directed to the Council during its consideration of the planning application, which offer various observations related to the merits of the scheme and include requests to meet in order to clarify important viewpoints. The Council was, for the most part, unresponsive to these observations and requests.
5. The National Planning Policy Framework (February 2019) (the Framework) sets out that local planning authorities should approach decisions on proposed development in a positive and creative way and should work proactively with applicants. Thus, the Council's lack of meaningful engagement at planning application stage does not firmly align with the Framework's requirements with respect to decision-making.

6. Nevertheless, the Framework also promotes early engagement and notes that good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community. Pre application advice was not pursued by the applicant. Notwithstanding the applicant's stance that their application package could not have been improved upon by invoking pre-application advice, the lack of engagement at this stage is a relevant factor in my considerations here.
7. In any event, it is not clear how the dispute between the Council and the applicant relating to the intended loss of existing trees could have been resolved through active engagement at planning application stage. Indeed, whatever steps could have potentially been taken to pinpoint/agree sensitive viewpoints, it is difficult to comprehend how this could ultimately have led to the dispute being resolved. It has not been clearly demonstrated that unnecessary or wasted expense at appeal stage was caused by virtue of the lack of constructive dialogue that took place at planning application stage.
8. The Council's reason for refusing planning permission explicitly states that the proposed development would result in the complete loss of an important group of trees and the positive contribution they make to the visual amenities of the area. This a group of trees for which permission to remove had not previously been granted, such that I do not consider that the Council acted inconsistently or with flawed understanding in refusing planning permission on these grounds. This is notwithstanding any past amendments made to previous development proposals at the site.
9. As will be seen from the outcome of the planning appeal that is the subject of this application, I have found that the intended tree removals would lead to harm being caused to a designated heritage asset (the Amersham Hill Conservation Area). It thus follows that I am satisfied that the Council properly substantiated its reason for refusing planning permission based on the effects of the intended tree losses.
10. The Council's refusal reason also states that the proposal would have a detrimental impact upon the long-term health and vitality of boundary trees. A 2011 appeal decision<sup>1</sup> and accompanying costs decision relating to a site in the London Borough of Croydon has been referred to and provided by the appellant, where the Inspector awarded costs due to the Council's failure to produce sufficient evidence to support its assertion that a perceived threat to protected trees merited planning permission for a single dwelling being refused.
11. However, each case must be considered upon its own merits and I have not been provided with the full details of the Croydon proposal. It is unclear whether the trees and proposed dwelling in question there had a similar relationship to each other when compared to the scheme under consideration here. The newly proposed dwelling would be situated only a short distance away from various tree canopies. It is also the case here that the Council's Arboricultural Officer, in their role as a specialist internal consultee, raised specific concerns with respect to the impact of the proposal upon retained trees, as reported through the Council's Officer Report.

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<sup>1</sup> APP/L5240/A/11/2154309

12. Should the planning appeal that is the subject of this application have been successful, it would have led to development in proximity to the eastern boundary of the site and to the single row of trees that line this boundary. This differentiates the proposal from the scheme that was first granted planning permission<sup>2</sup> in 2016, where built development was instead permitted in proximity to planting that, whilst still valuable, coexists with the boundary trees and is setback from the site's eastern boundary.
13. Notwithstanding the conclusions reached with respect to the long-term health and vitality of the boundary trees as part of my determination of the planning appeal, in light of the specific site circumstances to hand, I do not consider that the Council acted unreasonably in refusing planning permission based, in-part, on these grounds.
14. The Council has been content to rely upon the specialist expertise of its internal officers and has not sought to attain external independent advice. I see no fault in this approach. I consider that a balanced and fair assessment of the proposal followed, and development was evidently not prevented that should clearly have been permitted.
15. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Thus, having had regard to all other matters raised, an award of costs is not justified.

*Andrew Smith*

INSPECTOR

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<sup>2</sup> 14/07005/FUL, later varied through permission 17/06657/VCDN