



Costs Decision

Inquiry opened on 18 February 2020

Site visit carried out on the same day

by Mrs J A Vyse DipTP Dip PBM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th March 2020

Costs application in relation to Appeal Ref: APP/R5510/W/19/3230503 Stanford House, 9 Nestles Avenue, Hayes, UB3 4SA

- The 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 application is made by Healey Development Solutions (Hayes) Limited for a partial award of costs against the Council of the London Borough of Hillingdon.
 - The Inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing building and redevelopment to provide a building up to ten storeys, with 868 square metres of commercial or community space (Use Class B1 or D1) at ground and first floor level and 81 (44 x one bed, 28 x 2 bed and 9 x 3 bed) residential units to the upper floors with associated landscaping, access, car parking and cycle parking.
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Decision

1. For the reasons that follow, the application for an award of costs is allowed in the terms set out below.

The Submissions for Healey Development Solutions (Hayes) Limited

2. The positions of the parties in relation to costs was reserved from the outset. In the event, the Council has acted unreasonably in that it failed to provide any evidence to substantiate its contention that the scheme would be materially harmful to highway safety.
3. The Appellant repeatedly contacted the Council before the Inquiry requesting that the point should be withdrawn in order to avoid further wasted costs, but the Council rejected that invitation. In particular, on 6 February 2020 the appellant wrote to the Council drawing attention to highlighted sections of the Authority's Third Local Implementation Plan 2019-2041 (LIP3), on which basis the appellant's highways consultant concluded that the related putative reason for refusal (RfR6) was fundamentally flawed and was in complete contradiction to the Council's own policies. Notwithstanding the suggestion in the email that, in order to prevent further wasted costs on this matter RfR6 be withdrawn, the Council continued to defend it at the Inquiry.
4. To make out its case, the Council would have to demonstrate that despite the scheme not having any on-site parking, despite all the shops and services available in Hayes town centre being within easy access on foot, despite the site being within a stone's throw of Hayes and Harlington station which will be an Elizabeth Line station when the scheme opens, despite the plethora of bus routes and rail services serving the area, despite future residents being members of a car club and despite the daytime parking restrictions around the

site, significant numbers of future residents would choose to run their own cars to the extent that they would a) impede the free flow of traffic as they *'cruise around looking for somewhere to park, then take time to manoeuvre into position'*¹ and b) present a risk to road safety by parking *'in inappropriate locations.'*²

5. The Council rightly abandoned its contention that the scheme be harmful in terms of its impact on the free flow of traffic.³ That was always an unreasonable point to run.
6. The assertion that there would be a significant number of occupiers who would choose to run their own cars flies in the face of the Council's own conclusion in relation to the approved Site A scheme, namely that residents who could not park on the site itself would *'be discouraged from owning a car, choosing instead to cycle, walk or travel by public transport instead.'*⁴ If those people who could not park on Site A would be discouraged, so too would those who could not park on Site B.
7. The Council's position is also unrealistic given the extensive public transport available on the site's doorstep. The site is currently served by approximately 50 buses per hour and there are regular rail services from Hayes and Harlington into London Paddington, providing easy access to both central London and wider destinations nationwide. There is very easy access too to all Heathrow terminals, as well as Reading and numerous other destinations. All this will improve still further when the Elizabeth Line opens. The site is also within easy walking and cycling distance of the town centre and all its shops and services which cater for residents' daily needs, and car club membership would be available to all future residents, residents who would not be able to park in the Parking Management Zone in the day-time. These considerations clearly serve as a major discouragement to anyone thinking about running their own car.
8. Finally there is simply no evidence to suggest that anyone, let alone significant numbers of people, who did choose to run their own car would park in a way that harmed highway safety. As set out above, the Council abandoned its argument that drivers from the appeal scheme would *'impede the free flow of traffic.'* There is some unrestrained parking in the area (eg Harold Way) and there is plenty of on-street capacity in the area in the evenings.⁵ As such, in the unlikely event that someone did run their own car, there is no reason why they would park it in a way that compromised highway safety. As to illegal parking, parking in the daytime in the Parking Management Zone without a permit is not of itself inherently unsafe, and anyone parking for example on yellow lines, could be enforced against in the usual way by the Council. In short, there is no reason to assume that significant numbers of residents would even want their own car, let alone park in a way that would cause an unacceptable impact on highway safety. It was unreasonable for the Council to run this point at the Inquiry.
9. Further, and in any event, the Council's position is contrary to policy. The Local Plan contains maximum parking standards (policy DMT6). The scheme

¹ Dr Tilley proof page 11 paragraph 7.15

² Ibid

³ Dr Tilley roundtable session and Mr Volley cross examination

⁴ LIP3 page 102 (last paragraph)

⁵ Parking Survey Results at Appendix VLP R8 to Ms Porter's Rebuttal Statement

would comply with the policy in that it would not exceed the maximum standards. As set out above, there is no highway safety case that would justify higher provision. The same is true of London Plan policy 6.13.

10. With regard to emerging policy, it is common ground that the emerging London Plan should be given substantial weight. Policy T6 makes it clear that *'car-free development should be the starting point for all development proposals that are (or are planned to be) well-connected by public transport.'* At the end of the Inquiry it was common ground that the site is currently PTAL 4 and will be PTAL 5 when the Elizabeth Line opens.⁶ It is also common ground now that in order to comply with policy T6, the scheme should be car free.⁷ Those points should have been agreed before the Inquiry started and the point should never have been pursued.
11. Dr Tilly sought to argue that there are specific factors in play in Hillingdon that mean reliance should not be placed on the site's PTAL ratings eg service cancellations and noisy schoolchildren putting people off using the bus, but he was unable to point to any policy support for this approach. Indeed, his approach runs directly contrary to the emerging London Plan, which states in terms that: *'Differences in car use and ownership between inner and outer London are recognised, with trip distances and trip patterns sometimes making walking and cycling difficult in outer London'*, before going on to make plain that *'The approach to parking in outer London Opportunity Areas should be set out in Opportunity Area Planning Frameworks, completing the OA mode share target. Through OAPFs, parking provision can vary within an outer London to reflect PTAL, but the overall quantum must not exceed the relevant maximum standard.'* (emphasis added: see the supporting text to Policy T6).
12. It is absolutely plain that this is a site which can support car-free development. The Council's assertion to the contrary was unreasonable. It provided no evidence to support its case and a costs award is justified in this regard.

The Response by the Council

13. The basis of the appellant's application is nothing more than a disagreement with the judgements of the appropriately qualified transport witness who gave evidence in relation to the corresponding RfR. Such disagreements are not a legitimate basis for seeking an award of costs. The appellant has not identified any unreasonable behaviour that would justify an award of costs.
14. In pursuit of its application, the appellant alleges that the Council acted unreasonably in that it has failed to provide any evidence to support its contention in relation to the reasons for refusal. That is demonstrably not the case. The Council called Dr Tilly who gave evidence on this issue. His credibility, impartiality and expertise were not challenged, or in any way called in to question. What appears now to be said is that his evidence was 'unrealistic'. By this, the appellant simply means in fact that they disagree with Dr Tilly's analysis.
15. Whether or not future residents would choose to run their own cars is an inherently predictive exercise. It requires a judgement to be made about likely future behaviour. This is an issue upon which there is considerable scope for

⁶ Confirmed by Dr Tilley at the Inquiry. This confirmation supersedes the Council's previous assertion that the site would have a PTAL of 4 in 2021 and 2031 as set out at page 10 of the Highways Statement of Common Ground.

⁷ Confirmed by Dr Tilley at the Inquiry.

legitimate disagreement amongst professionals. Dr Tilly recognised that the absence of parking might discourage some residents from owning a car, but his concern is that they would not all be discouraged from doing so. There is no inconsistency with its approach to Site A, where it also sought a car-lite development, albeit at a higher level than is sought here, to reflect the poorer PTAL rating of Site A. That factors such as the location of shops and services, the availability of public transport, the presence of car club and the location of available parking would, in the appellant's view discourage any car use does not make Dr Tilly's evidence unreasonable. Certainly, it is not a proper basis for an award of costs.

16. The Council has not alleged conflict with policy DMHT 6, which set the Council's maximum parking standards, or with any of the parking standards in the London Plan or emerging Plan. As the appellant begrudgingly recognises, the Council's case was that there were '*specific factors in play*' in this location that justify the provision of some parking. Again, the appellant seeks to elevate its disagreement with this professional judgement into an allegation of unreasonable behaviour. It is no such thing. Dr Tilly was entitled to refer to specific factors which, in his expert professional opinion, merited the provision of some parking in this case, albeit well below the Local Plan policy maxima. He did not act unreasonably.
17. Further, it is notable that the appellant did not indicate any intention to apply for an award of costs following receipt of Dr Tilly's proof, at the start of the Inquiry, or following the related round table session at the Inquiry. At no point did it indicate that it regarded the evidence on this issue as justifying an award of costs.
18. The appellant does not identify and substantiate a specific example of unreasonable behaviour referred to in the PPG. As already stated, it cannot credibly be argued that the Council did not produce evidence in support of RfR6, in circumstances where a relevant professional whose credibility was not challenged, gave expert evidence on the issue. There is simply no justification for an award of costs in this case.

Reasons

19. It is good practice that applications for costs should, where circumstances allow, be made in writing before the hearing or Inquiry. Although neither party anticipated making any such application at the time of the case management conference, positions were reserved pending the hearing of the evidence. Having heard the Council's highways evidence, the appellant chose to make an application. Provided any application is made before the close of the Inquiry, it can be entertained. In this case, the application was submitted in writing in sufficient time for the Council to consider the matters raised and provide a written response. I find no harm or prejudice in this regard.
20. The Planning Practice Guidance states that irrespective of the outcome of an appeal, 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 associated appeal process. The same guidance makes it clear that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Failing to produce evidence to substantiate a reason for refusal on appeal, or making vague, generalised or inaccurate assertions about

a proposal's impact which are unsupported by any objective analysis, are cited as examples⁸ and are reflected in the applicant's claim.

21. The integrity and professional expertise of the appellant's highways witness is not in question. In light of the Planning Practice Guidance though, it was incumbent upon the Council to produce evidence to support its highways related concerns set out in RfR6.
22. The Council maintained that the PTAL ratings, which inform maximum parking standards in the relevant policies, do not fully reflect the situation in Hillingdon (an outer London Borough) but referred only to anecdotal evidence relating, for instance, to noisy school children and overcrowding, together with punctuality issues making bus travel unattractive. Reference was also made to travel to work and car ownership patterns derived from the 2011 census data. The Council's view was that those trends would continue to the extent that a significant number of future residents (estimated as some 40-60 residents in the oral evidence of Dr Tilly in the related discussion at the Inquiry) would be likely to own a private car for use on a daily basis to access employment. However, the Council's stance in terms of taking that historic position forward was not supported by any substantiated evidence, or by reference to relevant policies and guidance.
23. At the start of the Inquiry, the Council's position as set out in the Highways Statement of Common/Uncommon Ground, was that the PTAL rating of the site would remain at level 4 (good) in the future and would not increase to PTAL 5 (very good) on opening of the Elizabeth Line (Cross Rail) even together with the recent introduction of two additional bus services locally. However, its position changed during the Inquiry, when it conceded that the rating would rise to PTAL 5 at around the time that the development might be occupied.
24. Policy T6 of the emerging London Plan, agreed by the Council as attracting substantial weight in this appeal, states that parking should be restricted in line with levels not only of existing, but also future public transport accessibility and connectivity, with car-free development being the starting point for all new development in places that are, or are planned to be, well-connected by public transport. It requires that the maximum parking standards set out in policy T6.1 should be observed, with the policy referring to the standards in Table 10.3. The Table specifically recognises that there are differences between inner and outer London Boroughs with the same PTAL ratings, setting higher maximum parking provisions for outer London Boroughs. Significantly though, for **all** areas with a PTAL rating of 5-6, the Table is clear that development should be car free.
25. The Council's evidence did not acknowledge that employment destinations it referred to outwith the Borough, such as Reading and Slough, would be served by the new Elizabeth Line around the time that the development might start to be occupied. Moreover, using the same 2011 census database as the Council, the appellant demonstrated that by far the majority of existing residents who live in the same area as the appeal site, were in fact employed within a London Borough (ie not outside Greater London) with almost half employed within Hillingdon and with around 30% employed within the Middle Super Output Area which includes Heathrow airport, a key employment location for local residents, a location that is connected directly by bus and rail with those connections set

⁸ Paragraph: 049 Reference ID: 16-049-20140306

to improve in the future. The next main destination for around 15% of residents travelling to work was Hayes town centre, which is within walking distance of the site, with the other locations referred to by the Council not being 'key' destinations at all.

26. The Council's case did not deal with the 'buy to rent' nature of the development, with the unchallenged evidence of the appellant demonstrating that tenants of such schemes generally have a lower parking demand than owner-occupied developments. It also failed to recognise that its own policies and related guidance clearly anticipate a behaviour change and a move to car free development. In particular, its own LIP3 includes specific objectives promoting sustainable travel to encourage a reduction in car use and supporting new development environments that prioritise sustainable travel. LIP3 also confirms that car-free development facilitates behaviour change for residents from the onset of occupying a dwelling in an area that has limited or no parking.
27. It is noteworthy that both the GLA, through its Stage 1 comments, and TfL advised the Council that they strongly welcomed and supported the car free nature of the development proposed. Moreover, in coming to a view on likely car ownership, the Council's evidence made no assessment of the considerable range of services and facilities that are readily available in the town centre, within easy walking/cycling distance from the site, making it one of the most accessible locations in the Borough.
28. Neither was any objective evidence provided to support its contention that in the unlikely event that some future occupiers did own a car, parking on the highway in observance of the existing parking restrictions (which include a resident's parking scheme that future occupiers would be ineligible for) would, of itself, have a necessarily adverse effect on highway safety. Whilst RfR6 refers to concerns in relation to potential on-street parking being detrimental to the free flow of traffic, the Council's evidence did not, in the event, address this aspect. I recognise that parking enforcement in the area results in numerous parking notices being issued, demonstrating a disregard of those restrictions by some, but that is not evidence that such parking presents an unacceptable risk in terms of vehicular or pedestrian safety.
29. To conclude, I find that the Council produced no substantiated evidence or any objective analysis to support its position in relation to the matters raised by RfR6. That behaviour was unreasonable in the terms of the Planning Practice Guidance, which behaviour resulted in the appellant being put to unnecessary and wasted expense in having to prepare and present evidence on this matter. An award of costs in this regard is therefore justified.

Costs Order

30. 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 Hillingdon shall pay to Healey Development Solutions (Hayes) Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the matters raised by the sixth of the putative reasons for refusal only. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.

31. The applicant is now invited to submit to the Council of 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.

Jennifer A Vyse
INSPECTOR