
Costs Decision

Virtual Hearing held on 2 September 2020

Site visit made on 3 September 2020

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Costs application in relation to Appeal Ref: APP/R5510/W/19/3243159 Land to the east side of Newport Road, Hayes, London

- 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 Bugler Homes Limited for a partial award of costs against the Council of the London Borough of Hillingdon.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing buildings and redevelopment to provide 24 residential units (14 x 1 bed, 8 x 2 bed and 2 x 3 bed) in a part three storey, part four storey building with associated car parking, cycle parking, access and refuse facilities.
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Decision

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

The submissions for Bugler Homes Limited

2. The submissions were made in writing. In summary, it is said that it was unreasonable for the Council to continue its defence of the appeal from 19 August 2020, when it resolved to grant planning permission for a similar scheme. This has caused the appellant unnecessary and wasted expense in continuing to pursue the appeal after 19 August 2020.
3. This is contrary to Planning Practice Guidance (PPG) that all parties are expected to behave in a reasonable way [Paragraph 28, PPG]; LPAs should properly exercise their development management responsibilities and only rely on reasons of refusal that stand up to scrutiny [Paragraph 28, PPG]; not determining similar cases in a consistent manner [Paragraph 49, PPG]; preventing or delaying development which should clearly be permitted [Paragraph 49].

The response by the London Borough of Hillingdon

4. The response was made in writing. In summary, it is said the application for costs is wholly without merit. There is nothing unreasonable in the Council's conduct. The Council has engaged constructively and proportionately throughout, taking into account material considerations at all points and the change in the development plan. There is nothing unreasonable about maintaining a design objection. The appeal scheme is materially different to the fallback scheme.
5. There has been no wasted costs in the appeal. The hearing would have happened anyway because the key reasons for refusal relating to design were

rightly maintained, and agreement on planning obligations had not been reached.

Reasons

6. 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.
7. There have clearly been ongoing discussions between the parties in the run-up to the hearing. During these discussions the Council's clear the unequivocal position was that it did not consider the appeal scheme to be materially the same as the alternative fallback scheme which had received a resolution to grant from the Council. The reasons for this were clearly expressed. I have subsequently determined that the schemes are materially different.
8. In light of this, it was not unreasonable to maintain opposition to the appeal scheme which had been found to be unacceptable by the Council. Consideration of design matters and materiality are subjective considerations and the Council was entitled to disagree with the appellant in properly exercising planning judgement. So far as the Council's case was affected by the resolution to grant an alternative scheme, the Council altered its case at the earliest opportunity. The remaining parts of the case were suitably defended at the hearing. This was not a case of the Council delaying development that should clearly be permitted, as is clear from the outcome of the appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Michael Boniface

INSPECTOR