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## Costs Decision

Hearing Held on 28 October 2020

Site visit made on 28 October 2020

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

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

**Decision date: 9<sup>th</sup> November 2020**

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### **Costs application in relation to Appeal Ref: APP/M5450/W/20/3250398 80 Kings Road, Harrow HA2 9JF**

- 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 Ratnadeep Palit for a full award of costs against the Council of the London Borough of Harrow.
  - The hearing was in connection with an appeal against the refusal of planning permission for conversion of single dwellinghouse to three flats (2 X 2 bed and 1 x 1 bed); front porch; single and two storey side extension; single storey rear extension; rear dormer; two rooflights in front roof slope; parking; landscaping; bin / cycle storage.
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### **Decision**

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

#### **The submissions for Mr Ratnadeep Palit**

2. A written application for costs was made in advance of the Hearing. It is not necessary for me to repeat here the points made in that written submission. An oral submission in response to the Council's rebuttal was made, where it was alleged that the Council has provided no written or oral evidence that supports its position and that opinion and personal judgement has been heard at the Hearing without the support of clear evidence. Furthermore, it was alleged that the Council has not approached the proposal in a positive manner and has instead taken a negative, inflexible and uncooperative approach.

#### **The response by the Council of the London Borough of Harrow**

3. A rebuttal to the Council's written costs application was submitted in writing during the Hearing. It is not necessary for me to repeat here the points made in that written submission. An oral response to the appellant's oral submission was also made, where it was stated that the Council has carried out its statutory requirements to assess and determine the planning application and that Policy DM9 sets out that proposals that fail to make appropriate provision for flood risk mitigation, or which would increase the risk or consequences of flooding, will be refused. The Drainage Authority, as experts on drainage and flooding, considered the submitted details to be unacceptable. The proposal was assessed and determined in accordance with the development plan.

### **Reasons**

4. Planning Practice Guidance (the 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 or wasted expense in the appeal process.
5. The Council has demonstrated that Hearing notifications were sent out in accordance with statutory timescales, and thus acted reasonably in this regard.
  6. A Statement of Common Ground (SOCG) was not completed and agreed in advance of the Hearing. The Council was sent various written reminders and requests to assist in expediting this process over a prolonged period of time in the lead up to the Hearing. On only a single occasion would it appear that the Council contributed meaningfully to the SOCG's drafting.
  7. The Guidance sets out that not agreeing a SOCG in a timely manner is an example of unreasonable behaviour that may result in an award of costs. However, whilst the Council acted unreasonably in this regard, this behaviour did not lead to unnecessary expense being incurred at appeal stage. Indeed, the content of only a single paragraph of the latest draft version of the SOCG was not agreed, which related directly to the agreed single main issue for discussion at the Hearing.
  8. It has been asserted by the Council that they determined the original planning application against the development plan and in accordance with advice provided by an expert internal consultee (the Drainage Authority) in their role as Lead Local Flood Authority (LLFA). However, that advice was provided on the basis that it was not the LLFA's role to review the applicant's site-specific surface water drainage model<sup>1</sup> (the model).
  9. Whilst the Environment Agency (the EA) produce surface water flood mapping at a national/strategic level, LLFAs are responsible for the management of local flood risk including from surface water. This is confirmed in the Guidance. The EA have set out in written correspondence dated 7 February 2020 that the LLFA would be responsible for reviewing and ultimately approving modelling submitted as part of a planning submission and I have seen or heard nothing to clearly indicate or convince me otherwise.
  10. I acknowledge that the LLFA may not necessarily have the in-house expertise or resources available to review submitted surface water models on a site-by-site basis. But, as noted in my decision on the planning appeal that is the subject of this application, this does not discharge the LLFA's responsibilities in this regard. Indeed, there would have existed the option to look to seek to enlist external assistance and any potential options in this context would appear not to have been fully considered or discussed with the applicant or his representatives at planning application stage.
  11. A comprehensive Flood Risk Assessment has been prepared and the model would appear to be based on realistic yet conservative assumptions. Indeed, having seen and heard all the evidence I have no clear reason to consider that this submitted technical evidence is not fit-for-purpose. Furthermore, even had issues been identified as a result of any internal or external review of the model (if undertaken by or on behalf of the LLFA), I am confident that any such issues, rather than being major and unsurmountable, would have been resolvable through positive collaboration with the applicant's representatives.

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<sup>1</sup> Technical Note: Modelling Surface Water at Kings Road, Harrow; 18 October 2019

12. Having failed to exercise its full responsibilities in its role as LLFA, the Council delayed development which should clearly not have been refused and which accorded with the development plan. Indeed, to my mind, the planning appeal could easily have been avoided through the Council taking a more helpful and positive approach.
13. I therefore find that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. Having had regard to all matters raised, a full award of costs is therefore justified.

### **Costs Order**

14. 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 Harrow shall pay to Mr Ratnadeep Palit the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Council of the London Borough of Harrow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Andrew Smith*

INSPECTOR