



Costs Decision

Site visit made on 10 November 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Costs application in relation to Appeal Ref: APP/M5450/W/20/3250019 Land at the rear of 36-38 Spencer Road, Harrow, London HA3 7AP

- 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 Mercury 2 Limited for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against the refusal of planning permission for the redevelopment to provide two storey building comprising of seven room House of Multiple Occupancy (HMO); hard and soft landscaping; re-instatement of two dropped kerbs; bin and cycle stores.
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Decision

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

Reasons

2. The National Planning Practice 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 or wasted expense in the appeal process.
3. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations. Other grounds include that the Council fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. In summary, the Applicant sets out that the Council have relied on policies which are largely out of date and as such have failed to have due regard to national policies and material considerations which constitutes unreasonable behaviour. Furthermore, the Council have had an in-principle objection to the redevelopment of the car park on the basis that they believed it constituted garden land development as detailed in the Garden Land Development Supplementary Planning Document (GLDSPD). The Officers' delegated report is also not clear on whether the site is previously developed land or not and the Council have not sought to clarify their position at appeal. However, the site is factually not garden land nor is it garden land as defined in the GLDSPD.
5. It is further submitted that no consideration has been given to the emerging London Plan when considering the principle of redeveloping the rear of the site.

In addition to the above, the Applicant considers that the Councils view on the prevailing pattern of development are vague, generalised and inaccurate. No commentary of the Applicants evidence on this matter has been provided by the Council. Furthermore, Policy H2 of the emerging London Plan recognises that local character evolves over time and this has not been considered by the Council and has resulted in the approach to design being overly negative.

6. Finally, it is submitted that in respect to amenity only residential amenity is cited in the reason for refusal. It is suggested that the appeal scheme would safeguard the amenity of local residents over and above both the existing situation and the extant consent.
7. In response the Council considers that its delegated report sets out clearly the policy context and the definition of garden land development, and that it is a spatial designation and not necessarily a functional one. The Council also considers that other than aerial photography and historical planning records there is no clear or convincing evidence to conclude that the rear of the site solely functioned as a car park. Indeed, the officers' report also referred to the existence of a washing line which demonstrated that it had some amenity function to the existing residential use and was therefore not a generic, vague or baseless comment.
8. It is also submitted that the National Planning Policy Framework (The Framework) is also clear that although decisions should make as much use as possible of previously-developed land this does not apply where this would conflict with other policies within the Framework. Additionally, the Framework details that 'Plans should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area'. The Council also has the GLDSPD which is a material consideration.
9. The Council considered that in respect of Policy H2 of the emerging London Plan, the weight which could be attached to this policy was limited as there was conflict with other strategic policies set out in the development plan. It is also submitted that this is a matter of planning judgement, and the Council has produced substantive planning reasons to justify its decision.
10. In respect of design matters the Council considered that their Officers' report succinctly set out why the proposal would undermine the pattern of development within the locality and would result in an incongruous addition that would have a harmful impact on the character and appearance of the locality and the residential amenities of the adjoining occupiers. The Councils view was therefore legitimate and clearly explained as a matter of planning judgement.
11. Notwithstanding the Councils response, the Officers' report had conflicting views on whether the site is previously developed land, with the garden land section stating that it was garden land development and the impact on character and appearance of the area section stating the opposite. This inconsistency within the report has clearly given rise to confusion. In my decision, I found that the site is not garden land in the context of the GLDSPD and is previously developed land. In my view, the Council placed far too much weight on the presence of a washing line and that an unimplemented planning permission would provide a formalised garden area. In that sense, I find the

Councils approach to this matter, and the conflicting views within the Officers report, amounts to unreasonable behaviour.

12. In terms of the emerging London Plan, including Policy H2, the Council clearly gave some weight to it in its decision. Indeed, this policy recognises that local character evolves over time and will need to change in appropriate locations to accommodate additional housing on small sites. As such, it is for the decision maker to determine the amount of weight to give to such emerging Policies. I also considered whether the Council's Development Plan policies are up to date. In my view, the policies referred to are still largely consistent with current national planning policy and therefore I find that despite the fact that the Framework indicates that policies should be reviewed at least once every five years this does not mean that the policies should be disregarded. Indeed, it is also significant that I found conflict with the emerging London Plan as well as the current adopted policies. As such, I consider that the Councils approach to the planning policy position was not unreasonable.
13. In assessing the impact of a development on the character and appearance of the area, regard has to be given to the prevailing form of development in the area. To my mind, the Council undertook this in a reasonable fashion and it was clear that it was the scale and bulk of the proposal which gave rise to significant concerns, a matter which I concurred with in my decision. Whilst I found other design matters acceptable, all of the matters are subjective and very much a matter of planning judgement.
14. Finally, as with the overall character and appearance issue, the assessment of the amenity issue was very much based upon matters of planning judgement. Whilst I found in favour of the Applicant on this matter, in this instance, I consider that the Councils assessment was not manifestly unreasonable, even when the extant consent is taken into account.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to dealing with whether the site is previously developed land only and therefore a partial award of costs is justified.

Costs Order

16. 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 Mercury 2 Limited the costs of the appeal proceedings described in the heading of this decision; limited to those costs incurred in contesting whether the site is previously developed land, such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. 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.

Chris Forrett

INSPECTOR