



Costs Decision

Hearing Held on 27 January 2021

Site visit made on 28 January 2021

by Christopher Miell MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2021

Costs application in relation to Appeal Ref: APP/R5510/W/20/3244256 Land forming part of 43 The Drive, adjacent to 68 and 113 Knoll Crescent, Northwood HA6 1HW

- 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 the Council of the London Borough of Hillingdon for a full award of costs against Mr Mick Malski.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of two semi-detached houses with associated parking involving demolition of existing buildings.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG¹ states that the right of appeal should be exercised in a reasonable manner and that the appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when: the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence; and the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
4. The Council submits that the appellant has acted unreasonably by appealing against the Council's refusal of permission. They contend that the unreasonable behaviour has occurred in respect of both grounds set out above and they are seeking a substantive award of costs against the appellant to cover the full costs incurred by the Council in defending the case at a Hearing.

¹ PPG Reference: Paragraph: 053 Reference ID: 16-053-20140306 (Revision date: 6 March 2014)

5. As set out within the Appeal Decision, the appeal site has a lengthy planning history and there have been several planning applications and appeals seeking permission for various forms of residential development dating back over the past ten years, all of which have been unsuccessful.
6. The current proposal follows on from an appeal² which was dismissed in May 2019. In that case, the Inspector concluded that the proposal would cause substantial harm to the open and verdant character of the area through the impact upon protected trees and the harm to the contribution that the site makes to the character of the area.
7. Since that time, the development plan has changed with the London Borough of Hillingdon Local Plan: Part 2 Development Management Policies and Site Allocations and Designations (the 'LPP2') being adopted on 16 January 2020.
8. In addition, the Emerging Draft London Plan, which I have referred to as the 'Publication London Plan' (the 'PLP'), was at an advance stage of its examination when the appeal was made. Following the submission of the appeal, the Secretary of State wrote to the Mayor of London to confirm that he is content for the new London Plan to be published, with no further changes.
9. Given that the current appeal was submitted at a time following a change to the development plan and that the appellant's case also sought to partially rely on emerging policy contained within the PLP, I am satisfied that the circumstances had materially changed in the intervening period since the previous appeal decision was issued. Therefore, the appellant exercised the right of appeal in a reasonable manner in this regard.
10. Furthermore, the current proposal is materially different to the previous unsuccessful proposals at the appeal site. When compared to the most recent scheme, the proposal has a different design and appearance, lower ridge height and retains the Ash trees to the rear of the proposed dwellings, which were previously shown to be removed. Therefore, the proposal is not the same or a very similar development when compared to the previous proposals.
11. In determining the appeal, I concluded that the proposal would have an acceptable effect upon the character and appearance of the area and found that the proposed development constituted an exceptional case, which satisfied the criteria set out within Policy DMH6 of the LPP2. My conclusion was different to the Council and I allowed the appeal. Therefore, I cannot agree that the appellant acted unreasonably by making an appeal that had no reasonable prospect of succeeding.

Conclusion

12. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

Christopher Miell
INSPECTOR

² PINS Ref: APP/R5510/W/18/3212491