



Costs Decision

Site visit made on 15 August 2023

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

**Costs application in relation to Appeal Ref: APP/J1535/W/22/3304061
Highgrove Close, formerly land to the rear of 33-37 Hillyfields, Loughton
IG10 2PT**

- 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 S Tappenden of SJT Developments Limited for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of the Council to issue planning permission for the construction of a 4 bedroom two storey dwelling with associated parking and landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. Examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. With regard to the first reason for refusal, the applicant cites unreasonable behaviour for the failure to afford significant weight to the previous appeal decision as a material consideration, and the repetition of its reason for refusal.
4. The reason for refusal for this appeal proposal cites an unacceptable degree of harm to the living conditions of adjoining residents, for 3 interlinked elements. The first, relating to the proposed dwelling being overbearing and dominant, was directly addressed in detail within the recent appeal decision. That Inspector found the proposal would not cause any significant harm and thus would comply with the relevant policies. While the degree of impact on living conditions is based on planning judgement, and the Planning Committee disagreed with the Inspector in this regard, the only amendment from the previous proposal was a reduction in the roof massing.
5. It was therefore unreasonable that substantial weight was not given to the appeal decision as a material consideration. The PPG identifies that examples of unreasonable behaviour include persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated as acceptable.

6. The potential impact on the willow tree and on the retaining wall were previously unidentified elements of the reason for refusal. I do not find this unreasonable in principle, if additional information was identified from the Members' site visit or from neighbour objections compared to the previous scheme. However, with relation to the substantive content of these additional elements, I identified that any potential impact on the wall could be addressed and mitigated through the imposition of a suitable condition. No explanation has been given as to whether this approach was considered by the Council, in a similar manner to the imposition of conditions for contamination. I therefore find this to be unreasonable behaviour.
7. Furthermore, the Council did not specifically justify at the application determination stage or during this appeal, why the conclusions of the applicant's Arboricultural Assessment should not be relied upon. The Council's own Tree Officer raised no objection in this regard, and no detailed alternate evidence has been suggested other than Member opinion following their site visit. A Planning Committee is entitled to come to a different decision to that recommended to it by Council officers, however, this must be based on substantive reasoning. In the absence of such a justification, unreasonable behaviour has been demonstrated.
8. In relation to the second reason for refusal, the applicant suggests unreasonable behaviour in that the Council failed to accept the Unilateral Undertaking (UU) to mitigate the impact on the Epping Forest Special Area of Conservation. This UU was not signed until 27 March 2023, after the date of the decision. However, the Committee report indicated that the applicant had agreed to the necessary financial contributions, with the recommendation for approval being subject to the completion of an appropriate legal agreement to secure the mitigation. As the UU was substantively complete, I have been provided with no reason to doubt that it would have been finalised had the Council at Committee resolved to grant planning permission subject to its provision. This would have suitably secured the necessary mitigation.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A full award of costs is justified.

Costs Order

10. 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 Epping Forest District Council shall pay to Mr S Tappenden of SJT Developments Limited, the full 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.
11. The applicant is now invited to submit to Epping Forest District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L N Hughes

INSPECTOR