



Costs Decision

Site visit made on 22 November 2024

by A. J. Boughton MA(IPSD), Dip.Arch, Dip.Conservation, RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Costs application in relation to Appeal Ref: APP/R5510/W/24/3348490

2 Hilliards Road, Uxbridge, UB8 3TA

- 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 Ronald and Sheila Moulder for an award of costs against The Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of London Borough of Hillingdon to grant planning permission for Construction of one detached, single storey dwelling, with new associated garage and highway access.
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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 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. Costs applications do not depend on the outcome of the related appeal but upon the behaviour of the parties involved.
3. The applicant alleges that additional expense has been incurred as a result of Policy DMHB6' being used as a 'blanket reason to prevent all forms of development' suggesting that the Council has not made a reasonable assessment of the individual circumstances of the proposal and its surroundings. Policy DMHB6 is clearly material to the proposed development with a 'presumption against backland development' and is referred to in the Council's first and third reason for refusal (RFR). These, in the round, assert impacts of the proposal in terms of its proximity creating a cramped environment and poor living conditions for users and, with other matters, on the character and appearance of the surrounding area.
4. In considering the submissions of the Parties, I note that the Council appear to dismiss the Applicant's Daylight/Sunlight report which is plainly pertinent to a fair assessment of the proposal. Whilst the report concludes favourably as to the effects of the development, the Council's appeal statement suggests that 'The report does not appear to take into consideration.....(the boundary fence)'. Noting that the officer report states "*In the absence* of a daylight and sunlight

assessment it cannot be confirmed¹.....(etc)”, yet it is quite clear that a report to that effect was before the Council at the time of its determination²” and what the report actually does is to confirm the adequacy which the Council says was absent.

5. Moreover, I note that rather than acknowledge what was presumably an oversight which inevitably allowed the Council to mislead itself in reaching its conclusion, the Council now seek to justify their RFR on this point by suggesting that the calculations are in error by failing to acknowledge the existence of a 2m fence. Any reading of the methodology of daylight calculation would conclude that the given subtending angle from the middle of the closest window in No.2 would easily pass above a 2m high fence approximately 5m away. If the Council were in any doubt as to the accuracy of the report then a reasonable response would have been to seek clarification. Not only have the Council ignored a key document which was plainly relevant to the determination they made, they then introduced a spurious justification as a basis of refusal. This is plainly unreasonable behaviour.
6. I note that the second refusal reason (RFR 2) states: *“Due to its orientation and close proximity to No.16 Hilliards Road, the rear habitable room windows and garden of the new dwelling would be severely overlooked. The lack of privacy to habitable internal and external spaces would create a poor and unsatisfactory living environment for future residents of the dwelling, to the detriment of their amenities. The proposed development would therefore be contrary to paragraph 135 (f) of the NPPF (2023) and Policy D6 of the London (2021).”*
7. RFR2 refers, by way of justification, only to the Development Plan at Policy D6 of the London Plan (LP) and not to any policy of the Hillingdon Local Plan. Policy D6 refers to privacy at only one point (C) which, being related to the circumstances where single aspect dwellings may be acceptable, is not directed at the point of concern raised in this case. RFR 2 appears to have been hastily prepared and poorly substantiated.
8. The Courts direct that ‘unreasonable’ should have its ordinary meaning when considering the behaviour of parties. I consider that, in the circumstances described the applicant had little choice but to incur the costs of the appeal. For the reasons set out in preceding paragraphs, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Hillingdon shall pay to Ronald and Sheila Moulder, 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.

¹ In section 7.1 of the officer report (emphasis added)

² The Council’s own documents confirm that ‘A Day and sunlight assessment (Ref: SH/GI/HS/ROL01165) was submitted with the application’

10. The applicant is now invited to submit to The Council of the London Borough of Hillingdon, 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 Boughton

INSPECTOR