



Costs Decision

Inquiry held on 17 and 18 May 2011

Site visit made on 18 May 2011

by **P W Clark MA MRTPI MCMi**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 June 2011

Costs application in relation to Appeal Ref: APP/M5450/A/10/2143473 St George's Field, Headstone, Harrow, Middlesex HA1 4RJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by St George's Parochial Church Council for a full award of costs against the Council of the London Borough of Harrow.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the redevelopment of St George's Field to provide 7 x 1 bed flats, 8 x 2 bed flats, 4 x 3 bed houses and 8 x 4 bed houses; extended access road, detached double garage; altered parking for St George's Church Hall and retention of approximately 0.8 hectares of open space
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Decision

1. I allow the application for an award of costs in part in the terms set out below.

The submissions for St George's Parochial Church Council

2. A full award of costs is sought on the grounds that the local planning authority has been unreasonable and as a result an appeal has had to be made. The basis of the costs application is set out in ground (g) of the Grounds of Appeal.
3. Against the background of the previous appeal decision, the amendments negotiated and agreed with the Council's officers and their recommendation that permission be granted, the decision to refuse permission is perverse and manifestly unreasonable. There is no attempt to identify the benefits of retention of the private open space in contrast to the benefits of the proposed development so clearly identified by the previous appeal inspector. The Council's behaviour is contrary to paragraphs B15, B16, B20, B21 and B29 of the Costs Circular.
4. In the light of the previous appeal decision on a substantially identical proposal in 2008, for the Council to base its decision on two policies not substantiated in the earlier appeal was not a respectable basis for refusal of planning permission. Reference is made to paragraphs B15 and B16 of the Circular.
5. Notwithstanding the evidence of the Council's witness, there are not sufficient reasonable grounds to justify a refusal of permission. Reference is made to paragraph B20 of the Circular.
6. It is clear from this appeal, the previous appeal and the application to register the site as a village green that the Council has given unreasonable weight to

local views. It has failed to appraise the development objectively. Reference is made to paragraph B21 of the Circular.

7. The extensive involvement of third parties, who had all attended the previous inquiry, shows the Council's dependence on local opposition from third parties. Reference is made to paragraph B22 of the Circular.
8. Taken together, the circumstances of this appeal show that the local planning authority acted unreasonably. It paid too much attention to locals. It relitigated issues put to bed by the previous inspector. Had the local planning authority acted properly, the planning application would have been approved. It wasn't, so the Parochial Church Council, a charity, is forced to pursue an appeal.

The response by the Council

9. The charitable status of the appellant is irrelevant to the claim for costs.
10. Paragraph A31 of the Costs Circular requires early disclosure of an application for costs, unless triggered by events at the Inquiry. This costs application arises from a decision taken by the Council last autumn. An advance written statement of grounds should have been provided. It wasn't. On that basis alone the application should be rejected.
11. The previous appeal inspector concluded that the proposals do not accord with UDP policies EP20 or EP47. To claim it is unreasonable to refuse such an application is farcical in the context of Section 38(6) of the Planning and Compensation Act 2004 when the presumption is in favour of the development plan. The proposal is a clear breach of policy. To allege that refusal of a breach of policy is unreasonable is an argument of no merit.
12. All the evidence points to the fact that the members of the Council made their decision on planning grounds. Their approach was not tested in cross-examination. The appellants do not like or agree with the Council's decision but that does not make it unreasonable. The test in the Circular is the need to show reasonable planning rounds and to produce relevant evidence. The local planning authority has shown that the proposal was rejected by the Council on planning grounds. No sensible person could allege that the local planning authority has not shown relevant evidence.
13. This was not a case where the Council rejected an Inspector's conclusions. He refused the previous scheme. So did the local planning authority.
14. There is no foundation for the assertion that members gave unreasonable weight to residents. The Council's case had not relied upon third parties; its witness's evidence stood on its own.

Reasons

15. Paragraph (g) of the appellants grounds of appeal provide, in writing, clear advance notice of the grounds on which the costs application is made.
16. The previous appeal inspector rejected the previous, highly similar scheme. Whilst recognising that the proposals breached two local plan policies, he also made it clear that the benefits of the scheme might reasonably be considered to outweigh any contravention of those policies if the appellants devoted further hard thinking and decision making to the regime for the use of the open

space which might ensue if the appeal were allowed. He thus gave clear indications of the scheme's acceptability.

17. The Council's reasons for refusal of the current appeal scheme do not address the adequacy of the regime proposed for the use of the open space. In contradiction of the previous inspector's conclusion that the benefits of the scheme might reasonably be considered to outweigh the contravention of policies to retain open space, the Council's reason for refusal simply asserts the opposite. Paragraph B29 of the Costs Circular advises that persisting in objections to a scheme which an Inspector has previously indicated to be acceptable may lead to an award of costs against a planning authority.
18. A Unilateral Undertaking represents the appellant's response to the Inspector's requirement for further hard thinking and decisions about the regime proposed for the use of the open space. The Council's rejection of the Unilateral Undertaking is based on legal submissions. Other than assertions that the alternative provision proposed is "not suitable" the evidence put forward by the Council at the Inquiry does not address the substance of the proposals for the use of the open space.
19. It simply rehearses the policy arguments known to the previous inspector. It flatly contradicts the judgement of the previous inspector that the benefits of the scheme might reasonably be considered to outweigh any contravention of UDP policy EP47 without adducing any new evidence to justify such a contrary view. It questions the balanced view reached by the previous inspector by reference only to four bullet points covering matters which he explicitly took into account. It adds no new evidence to justify such disagreement. That is unreasonable and contrary to the fourth bullet point of paragraph B29 of the Costs Circular.
20. The appeal is dismissed on the narrow ground of three legal points relating to the Unilateral Undertaking. The first point concerns the provisions offering to transfer the retained open space land to the Council. The Council requires an indemnity against the possibility that an existing covenant dating from 1923 might be exercised to prevent or restrict the Council's use of the land as public open space. Without such indemnity it has indicated a refusal to accept a transfer of the land.
21. There is no evidence to suggest that any party benefiting from that covenant would be able to enforce it. The developers of the housing element of the appeal proposal would have to deal with the covenant in any event in order for that part of the appeal proposals to proceed without risk of challenge. It is common for developers to take out insurance against such a possibility if they are unable to obtain a discharge of the covenant. The Council could do the same, if they did not anyway benefit from whatever action the housing developers took.
22. So the Council is being exceptionally cautious in its attitude to the Unilateral Undertaking. That is its prerogative. It is unhelpful, even intransigent, but not unreasonable. The appellant is equally unhelpful, even intransigent, in declining to protect the Council against the difficulty it has identified.
23. Were it not for this obstacle the Council might have entered into an agreement. That would have rendered unnecessary the other provisions of the Unilateral Undertaking which I have found defective. The appeal would then have succeeded. As it is, it has failed.

24. I conclude that the Council's behaviour in this appeal has been unreasonable except in relation to the drafting of the planning obligation. Even then, with goodwill on both sides, that should not have been a sticking point. It should not have been necessary for the appeal to have been made. Unnecessary costs have been incurred in making the appeal. The application for costs succeeds except in relation to the planning obligation.

Costs Order

25. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that the Council of the London Borough of Harrow shall pay to St George's Parochial Church Council, the costs of the appeal proceedings except in so far as they dealt with the validity of a planning obligation, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

26. 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

P. W. Clark

Inspector