Our Ref: BAR/BXW/ Rivendale
Your Ref:

10 May 2017

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The Planning Inspectorate
Temple Quay House
2 The Square
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Dear Sirs

Costs Application in relation to an appeal by Rivendale Construction Ltd ("the Appellant") for

"Alterations and extensions to existing roof to create 3 no. flats (including 2nd floor balconies) within the roof space following conversion of the existing office space (B1a) on the ground and first floors to residential dwellings (C3) with rear extension, and associated parking, cycle and bin storage"(Ref: F/17/79817) at 38-40 Leigh Road, Eastleigh SO50 9DT

1. We act for the Appellant in relation to this application for costs only. It is our understanding that the Appeal has been lodged and is pending registration by the Inspectorate.

2. As this will be an appeal determined via the written representations procedure, this application is within time as it is made prior to the final comments stage. This application should be read along with all of the evidence submitted as part of the appeal by the Appellant's consultant.

3. The costs awards regime seeks to increase the discipline of parties when taking action within the planning system, through financial consequences for those parties that have behaved unreasonably and have caused unnecessary expense in the process if the entire appeal could have been avoided. We contend that the local planning authority ("LPA") failed to act reasonably which caused our client to incur unnecessary expense in having to bring an appeal that would have been avoided if the LPA had acted as a responsible LPA and not refused the application on ill-founded and spurious grounds. As a result the LPA should be disciplined and have costs awarded against for the reasons set out in the following paragraphs.

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4. The LPA's decision in relation to the proposed development is not consistent with up to date national and local planning policies as a result of them improperly giving weight to unsound and soon to be withdrawn Local Plan policies. If its decision had been made in accordance with the relevant and extant policies, the application would have had to have been approved, thereby avoiding the need for the appeal.

5. The LPA has not properly exercised its development control responsibility and has relied on reasons for refusal and material planning considerations relating to design which do not withstand scrutiny. This position has added to the Appellant's development costs through creating avoidable delay by refusing the scheme without good reason.

6. The LPA have not behaved in an acceptable way, it has not followed good practice in relation to its quality of case through:

    i) relying on Local Plan policies that carry no weight; and
    ii) not substantiating its reasons for refusal; and
    iii) misunderstanding the impact (such as it is) of its design; and
    iv) not applying the correct weight to the relevant Local Plan policies and material planning considerations.

7. This is an appeal that relates to the planning merits and the handling of the planning application by the LPA. The appeal is unnecessary and would have been avoided if the LPA had undertaken their statutory function responsibly. It has not properly exercised its statutory duty to determine the appealed application in a reasonable manner.

8. As a result of the behaviour of the LPA, the appellant should be awarded its full costs (whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation and the expense of making this costs application), as the LPA have behaved unreasonably with respect to the substance of the matter under appeal. It has unreasonably refused the appellant's planning application.

9. The LPA has clearly made vague, generalised and inaccurate assertions about the appellant's proposal's design and amenity impact, which are unsupported by any objective analysis or clear specific and detailed evidence from an expert, e.g. in design or architecture as required by NPPG Paragraph: 005 Reference ID: 26-005-20140306 and the relevant parts of the NPPF.

10. We accept that planning appeals can often involve matters of judgement concerning the character and appearance of a local area or the living conditions of adjoining occupiers of property. However where the outcome of an appeal turns on an assessment of such issues it should follow that costs will be awarded if realistic and specific evidence is not provided by the LPA (at the time of the application's refusal it wasn't) about the consequences of the proposed development. Furthermore the vague, generalised and inaccurate assertions about the proposed development's impact, which are unsupported

by any objective analysis (at the time of the application's refusal it wasn't). Due to that absence a costs award should be made against the LPA.

11. Further unacceptable behaviour from the LPA included its failure to enter into constructive pre-application discussions with the appellant as its officers refused to make recommendations that would support approval, instead exclusively focussing on elements that "supported" a refusal including a fixation on the proposed white rendering of the building which although initially raised as a main reason for refusal was not relied upon when the proposed development was refused by the LPA. If pragmatic and helpful discussions had taken place that also accepted that external alterations would be inevitable and necessary for the appellant to fully utilise its Permitted (residential) Development, then the application should have been approved, avoiding an appeal. Officers should have been aware that the appeal application as well as earlier schemes that attempted to placate officer's issues on design represented an opportunity for the building to be improved beyond its existing state which already has consent for residential use without any external alterations or changes to the roof.

12. The decision to refuse the planning application using the two reasons for refusal was without foundation as the relevant policies of the LPA's Local Plan are out-of-date when applying the relevant parts of the NPPF which should have been done by the LPA's officers. If this had been undertaken (see the appellant's evidence), the LPA would have been forced to conclude that the proposed development does indeed comply with the relevant policies in the Local Plan (i.e. 53.BE and 59.BE) and those within current national plan policy.

13. Our client is not satisfied that it has seen anything from the LPA which demonstrates that its officers complied with their relevant statutory duty. Applications for Planning Permission must be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise[1]. The development plan policies (53.BE and 59.BE properly applied) should have therefore been given priority in the processing of the appellant's planning application, especially when considering that the material planning considerations that apparently overwhelm those policies are not substantiated or objectively relevant.[2]

14. The effect of the statutory priority is that material considerations need to be particularly weighty before they can justify a decision contrary to the development plan because the scales do not start off on an even balance.[3] We have seen no objective balancing of policies 53.BE and 59.BE with the purported and weak material considerations

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[1] In accordance with s 38(6) of the *Planning and Compulsory Purchase Act 2004* and s 70(2) of the *Town and Country Planning Act 1990.*

[2] *Edinburgh Council v Secretary of State for Scotland [1997]* 1 WLR per Lord Clyde at p 1459.

[3] *South Northamptonshire Council v SSCLG [2013]* EWHC 11 (Admin), per HHJ Mackie QC (acting as a Deputy Judge) at para 20.

(detrimental impact on amenity and the local area's character) that apparently resulted in the application being refused. Compounding this error was the fact that relevant policies within the NPPF were not applied; specifically those mentioned in the Appeal Statement along with paras 56, 59, 60, 61, 63, 126, 131 *8 3and especially 187 (see the appellant's evidence).

15. In its refusal the LPA relied on two policies from the *Revised Draft Eastleigh Borough Local Plan (2011-2029)* to substantiate its refusal - DM1 and DM29. These policies are part of an emerging Local Plan which was found to be unsound at an Inquiry. The LPA has now indicated that it intends to withdraw this emerging plan and prepare a new Local Plan. Whilst this has not yet been done, the fact that it will, makes it clear that no weight can be afforded to these policies as either a material planning consideration or policy that can be considered part of the statutory development plan. It is unreasonable for the Council to apply policies in its determination which currently carry little weight and very shortly none at all. This unreasonable behaviour by the LPA causes unnecessary expense to the appellant as it should not be necessary for it to appeal or wait for the policy position to inevitably change if the Council know that the unsound policies carry and will carry little and then no weight.

16. The policy context provided within paragraphs 14 and 49 of the NPPF should have been more significantly applied in the determination of the application as Eastleigh Borough Council has a shortfall that it accepts in its housing supply. The support for the sustainable development proposed by the appellant's scheme; particularly housing should therefore have been applied as it is encouraged in the location of the proposed development by saved policy 53.BE of the Local Plan. This approach was also supported in a High Court decision between *Cotswold District Council and Secretary of State for Communities and Local Government*, dated 27/11/2013, see paragraph 72 of the judgement. The failure to consider relevant case law and properly apply the relevant Local Plan policy by the proposed scheme is a further example of the LPA's unreasonable behaviour in its determination.

17. Compounding further its unreasonable behaviour, the LPA has relied on Supplementary Planning Documents (SPDs) in its refusal that are dated and supported by out-of-date and obsolete development plan policy (see the appellant's evidence).

18. The LPA claims in its refusal that the proposed development results in harm to the prevailing character of a section of Leigh Road due to the bulk, scale, height, massing and incongruous design of the alterations and extension to the roof.

19. It is clear however that there will be no more than a change in form rather than an increase in bulk of the roof. The alterations to provide a second storey do not result in excessive bulk (see the appellant's evidence). The LPA did not provide specific

measurements in support of its conclusion, because in fact the new form of roof within the proposed development has a lower profile that is in no way excessive in bulk or form.

20. The reference to the proposed development's design impact, height and massing as part of a reason for refusal is ill-founded and without justification (as per the appellant's Appeal Statement). The finished height of the proposal is actually lower than that of the existing building. The inclusion of height as a matter of concern demonstrates a clear lack of understanding of the proposal as submitted and further demonstrates the LPA's unreasonable behaviour in refusing this development.

21. The LPA seeks retention of the existing building on design grounds, even though there is very little in the way of significant architectural change. The building is not listed nationally, nor is it locally listed or within a Conservation Area or any other special designation for design or character. Consequently there is no sound policy reason to prevent the enhancement and alteration of the building in the manner proposed. This demonstrates further unreasonable behaviour on the part of the LPA to misuse their development control function to safeguard/protect a building with no basis apart from the whim of planning officers.

22. The LPA's decision to ignore the full policy context and requirements for the area surrounding the proposed development is clearly unreasonable behaviour. The LPA has not justified why it is appropriate to ignore the relevant Local Plan policies and their requirements or accepted that its material planning considerations supporting refusal do not withstand scrutiny.

23. We hope that the Inspectorate agrees that in this situation a full award of costs is justified.

Please contact Bernard Ralph of this firm in the event that you have any queries.

Yours faithfully



MOORE BLATCH

Please note we have now relocated into our new Southampton office. Our new registered office and Southampton premises is at Gateway House, Tollgate, Chandler's Ford, Eastleigh, Hampshire SO53 3TG.

Our offices at 11 The Avenue, Southampton SO17 1XF and London Court, 64 London Road, Southampton SO15 2AH have been closed. Our telephone and email contact details remain the same.