

STATEMENT of CASE – GROUNDS of APPEAL

Planning Appeal under Section 78

Refusal to Grant Planning Permission

BFSGC

Saga Ct, Unit 3 Sibleys Rise, South Heath, Bucks, HP16 9QQ

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LPA: London Borough of Hillingdon Council

LPA ref: Application Ref: 13487/APP/2024/3077

Refused: 11 February 2025

Site : 71 Hercies Rd, Uxbridge,
Hillingdon, UB10 9LU

Appellant: Mr T. Cunningham

Agent: BFSGC, Joseph G Jones

Saga Court, Unit 3 Sibleys Rise, South Heath, Bucks, HP16 9QQ

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1. Introduction and background

1.1 My Name is Joseph G Jones (BFSGC Planning) and I have in excess of 15 years experience in planning related matters in the public, voluntary and private sector..

The majority of my work is site surveys and assessments, planning applications, appeals, local plan representations and court submissions. I work collaboratively with various experts across all the fields that impact the planning process.

Since 2007 I have been a consultee to the Council of Europe, on issues that relate to Human Rights, and for some years subsequent to 2008 I was a consultee to the United Nations (I was the principle UK Technical Expert appointed to the United Nations Advisory Group on Forced Evictions in 2009).

1.2 A planning application (with fee) was submitted to Hillingdon Council in 2024
Application description: "Permission is sort to widen the existing vehicle access crossover , to provide a safer and more efficient access for vehicles, the current crossover being misaligned." "

Application Number: 13487/APP/2024/3077

This is not disputed by either party.

1.3 The Application was validated 20th December 2024, with a target date of 14th February 2025.

The application was determined 11 February 2025.

1.4 In this statement I consider:

- The grounds of appeal..
- Other relevant issues as required.
- This statement to be read with reference to the Statement by Apex Strategies (our Highways Consultants) and the other documents submitted.

1.5 Grounds of Appeal

Where possible I try to avoid duplication in my submissions, but some points may overlap with other documents. There are several considerations which support the appeal going forward and the granting of planning consent.

The planning appeal seeks permission to widen the existing vehicle access crossover by a small amount, to provide a safer and more efficient access for vehicles, the current crossover being misaligned.

The Council's decision to refuse the application appears to apply the width limit without fully considering policy intent or the site-specific conditions. The proposed development seeks to widen the highway access to correct a clear safety hazard while maintaining pedestrian accessibility and safety, which would be a benefit for all.

Unfortunately we were not made aware that Highways had objected to our planning application, neither was the Highways objection displayed on the LPA Planning website/portal, therefore we did not get the opportunity to address the objection prior to the application decision being made.

The LPA also determined the application confusing the application site (the dwelling) with the adjacent dwelling (the bungalow next door).

1.6 Mr Cunningham (nor our Highways consultant) wasn't given the option to comment on the objection made by the Highways Department.

1.7 The Human Rights of the appellants were not given the correct weight when the balancing exercise was carried out.

1.8 The case for planning permission to be granted principally relies on the following matters:

- The proposed access would correct the currently misaligned crossover, and that would be a benefit.
- The proposed development would provide a safer and more efficient access for vehicles, see Statement by Apex Strategies
- The proposed development would provide a safer access for pedestrians, see Statement by Apex Strategies
- The officer Delegated Decision misidentifies the application property.
- Human Rights legislation was not given sufficient weight.
- The failure of the LPA to consult, which is a failure of policy.
- Failure of the LPA to apply policy correctly see Statement by Apex Strategies

1.9 The Council fail to correct identify the application property, describing the property as a bungalow, when it is actually a semi detached house.

- Page 2 of 7 of the Delegated Decision report,

1. Summary

"The application site comprises a detached bungalow located on the east side of Hercies Road."

- Page 3 of 7 of the Delegated Decision report, at 3.1:

Site and Locality

"The application site comprises a detached bungalow located on the east side of Hercies Road."

1.10 The application site is in fact adjacent the "detached bungalow".

The application relates to the dwelling adjacent the detached bungalow on the east side of Hercies Road.

If the LPA had correctly identified and taken the location into account, they should have noticed that the neighbouring dwelling is a bungalow and the application property is not.

Had the LPA realised they were mistaken in their initial assumptions that should have impacted their judgement, and the application decision in our favour.

1.11 Once we received the Refusal Notice, which in the summary quoted an objection from Highways, I emailed the planning officer asking for details of the objection.

1.12 On the 18th February 2025 I received an email which included the Highways objection by Richard Buxton.

The objection states:

“An application for planning permission has been received to extend the existing vehicle crossover at 71 Hercies Road.”

There is also a comment stating that “The house looks to be end of terrace.”

The objection then lists various policies, and includes a photo of the property that relates to the application, which is a semi detached house on two levels.

1.13 On the 2025-02-19 We received an email from Agatha Dutton of the LPA stating:

”Regarding the subject application, I believe there was an error in the description, as the property is actually an end-of-terrace.
However, this detail does not affect the decision.”

It seems she didn’t notice her report related to the wrong property when she compiled her report.

1.14 The planning officer does not appear to have visited the application site, at the time she made her determination; if she had she would not have confused the property with the adjacent property.

1.15 It appears there was little or no balancing exercise, by the planning officer, to see how the Apex Strategies submission dated 14 October 2025 compared with the single emailed paragraph comments of the Highways Consultee who completed his comments with the sentence:
“Please note the comments made in this email represent officer opinion and cannot be seen to prejudice the Local Planning Authority’s formal determination in relation to any application or planning matter.”

1.16 The planning officer stated, her “decision was in large part based on the recommendations” of the Highways Officer, those being recommendations he said “cannot be seen to prejudice the Local Planning Authority’s formal determination in relation to any application or planning matter”.
Presumably he said that because he had not read all the application papers, nor visited the property.

We are not made a ware of any other reason for the refusal besides the Highway Officers comments.

1.17 The failure of the LPA to engage with the applicants when the LPA was informed that Highways were objecting to the application is a failure of policy which needs to be given substantial weight, because it breached the appellants Article 6 rights.

2.0 Green Belt

2.1 Delegated Report doesn't allude to Green Belt as the Green Belt would not be impacted by the proposed development.

3.0 Sustainability

3.1 The proposed development is sustainable, permanent planning permission exists for the dwelling, and sustainability is not an issue.

3.2 NPPF sets out the presumption in favour of sustainable development. The proposed development would have a minimal impact (if any) on the visual amenities of the area because most views of the development would be de minimus due to its small scale and small size, we conclude that on the environmental strand of the sustainability test the proposed development is neutral, when considered altogether the essence of the guidance on sustainability within the NPPF.

4. Human Rights

4.1 The property is residential and Article 8 of the Human Rights Act is engaged.

The site occupiers have a right to a home and family life under Article 8 ECHR (see attached Article 8 HR).

By refusing the appellants application the LPA interfered with the appellants Article 8 Rights, and their Protection of Property Rights, by denying them permission to align their access, when it is misaligned, which was not supported by to policy.

Following on from those considerations, if the appeal is dismissed it would result in the families having to continue to use a substandard Highway Access, and that would represent a serious interference with their rights under Article 8 of the European Convention on Human Rights.

The Human Rights Act Article 6

The LPA did not make the appellant aware that there had been an objection to their planning application, neither did the LPA make the appellant aware of the concern raised by the Highways department prior to the LPA making their decision.

As such the appellants Article 6 Human Rights were breached, because they did not get a fair hearing.

4.2 Primacy of the child

The family living at this property have school age children and that warrants consideration, in relation to the appeal, as primacy of the child carries significant weight (obviously the whole family are entitled to a properly aligned highway access).

4.3 The best interests of children should be a primary consideration when planning applications are being considered, although they will not always determine the outcome of a case, no other factor should be given more weight. The best interest of the children must be considered first when assessing proportionality.

It was considered that personal circumstances would need to be considered when the application was submitted, because it didn't seem logical that the LPA would not support the realignment of a misaligned access, or that it would be said that realigning the access would itself be a safety issue.

This obligation was crystallised on the publication of *AZ v SSCLG and South Gloucs DC 2012* (see Appendix HC – AZ Judgement) which has existed for a number of years. Subsequent to AZ the SOS has agreed that such considerations are relevant to the planning balance.

5. Policy, Policy failure.

5.1 The NPPF also outlines the need for consultation on individual planning applications, ensuring that those potentially affected by development proposals have an opportunity to express their views. The lack of consultation by the LPA until after the application was determined is a failure of policy.

5.2 Planning permission was sought from the LPA and declined, the LPA failure of policy adds weight to the appeal.

The LPA included policies in their Decision Notice that were irrelevant, not directly relevant, inapplicable, not supportive of the LPA reasons for refusal, or not reasons for refusal as they support what is proposed in the application.

Apex Strategies Statement examined quoted policies, and concluded the refusal of the application based on DMT 2 was not justified.

"The proposal aligns with the core objectives of Policy DMT 5, and refusal on these grounds is therefore not justified."

Refusal ref Policy DMHB 12 is not justified, see Apex Strategies Statement.

5.3 The National Planning Policy Framework (NPPF) emphasizes a duty to consult with the public and stakeholders during the planning process, particularly regarding local plan making and decision-making on planning applications. This duty ensures that local communities and interested parties have a chance to influence the development of their areas.

5.4 The fact that the objection by the Highways department was not made known to the appellant until after the planning application was determined was particularly significant, and it contributed to the planning officer confusing the property with the adjacent property.

5.5 Mr Cunningham wasn't given the option to comment on the objection made by the Highways Department, neither was our consultants.

5.6 Local environmental issues

5.7 There are no environmental issues raised, and I am not aware that any need to be considered.

6. Other Issues and Potential Concerns

6.1 There is sufficient room for parking and turning within the site.

6.2 The proposed development at this location would not place undue pressure on local infrastructure or services, and the people who would be using the access already live on site.

6.3 The appeal site is not at risk of flooding.

6.4 Landscape

6.5 No landscape issues have been raised, and I am not aware that any need to be considered.

7 Issues for Consideration

7.1 We put forward arguments that together and separately favour granting planning consent:

7.2 Response to the schedule of reasons for refusal.

a) The proposed changes to the access would not impact cyclists. If cyclists were entering or leaving the property their access would be improved, if cycling past the property it would have no impact.

b) Highway – Kerbs Left Hand Drop Kerb
Currently the left hand dropped kerb (sloping kerb) is misaligned with the access to 71 Hercies Rd, which our application sort to rectify.

c) The proposed changes would not significantly compromise the safety of pedestrians, and the LPA have failed to demonstrate why they think the proposed changes would compromise the safety of pedestrians

d) The proposed development would help guide vehicles and provide a safer edge for pedestrians, reducing the risk of accidents.

f) The proposed development would improve the highway access by providing a gentle slope in the correct location, making it easier for vehicles and pedestrians to navigate, thereby enhancing overall accessibility and safety. The misaligned crossover has negative safety implications, so personally I don't understand why the LPA would want to preserve the status quo.

g) Failure of Policy is a significant material consideration when considering if VSC's exist.

h) Human Rights Article 8 and other Articles/rights support our appeal.

Rights and Considerations

The Human Rights act is engaged in this situation, and any decision needs to be considered with a view to the HR Act.

Article 8 Respect for private and family life

Article 8 encompasses the right to respect for private and family life, home and correspondence. In general, the Court has defined the scope of Article 8 broadly, even when a specific right is not set out in the Article.

The primacy of the child needs to be a paramount consideration, and there are children living on the appeal site, and so their needs falls to be considered as significant weight in favour of the planning appeal being allowed.

See HC Decision, AZ v SoS 0 CLG South Gloucester Case No. CO/55/2011

Article 6 The Right to a fair trial

Article 6 relates to the actions of public authorities.

A public authority in making a decision that has an impact on the civil rights or obligations of someone must observe those obligations.

In this context, civil rights and obligations are those recognised in areas of UK law such as property law, planning law, family law, contract law and employment law.

It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

The Right to Adequate Housing –General Comment No. 4. (Art 11. (1))

Adequate housing was recognized as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights. Other international human rights treaties have since recognized or referred to the right to adequate housing or some elements of it, such as the protection of one's home and privacy.

Pursuant to article 11 (1) of the Covenant, States parties "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

10.1 There was no local public opposition to the development, and in my opinion the proposed development is not controversial.

10.2 The Inspector is respectfully invited to uphold the appeal and grant planning consent.

10.3 Together the positive aspects of the planning application outweigh harm (if there is any) caused by the proposed development and in policy terms there isn't anything that isn't outweighed by the personal circumstances (Human Rights etc) potential policy failure or other aspects.

In our opinion circumstances exist that demonstrated the need for the development so as to justify the granting of planning permission.

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16th June 2025