
Costs Decision

Hearing held on 23 August 2016

Site visit made on 23 August 2016

by G D Jones BSc(Hons) DipTP DMS MRTPI

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

Decision date: 28 September 2016

Costs application in relation to Appeal Ref: APP/Q5300/W/16/3144640 216 High Street, Ponders End, Enfield EN3 4EZ

- 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 of the Council of the London Borough of Enfield for a full award of costs against Swish Estates Ltd.
 - The appeal was against the refusal of planning permission for the erection of part 4 and 5 storey buildings with basement comprising 3 commercial units A1 and A2 use class with 20 residential units comprising 3 x 3 bed houses, 3 x 3 bed flats, 8 x 2 bed flats and 6 x 1 bed flats, bicycle storage, refuse storage and landscaping.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Government's Planning Practice Guidance (PPG) states that irrespective of the outcome of the appeal, costs may only 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.
3. The Council's application was made in writing at the hearing and, in summary, it is made on two grounds:
 - That the proposed development is clearly not in accordance with the development plan and no other material considerations are advanced that indicate the decision should have been made otherwise; and
 - To cover the costs of the involvement of a viability consultant and a quantity surveyor due to the lack of affordable housing and an appropriate housing mix and the submission of poor quality information as part of the viability report.
4. The Council's first ground is given as an example in the PPG of behaviour which may give rise to a substantive award against an appellant. In my associated Appeal Decision I identify seven main issues, which were agreed with the main parties at the start of the hearing. For the reasons set out in that Decision I have found no conflict with the development plan in respect to three of those main issues. I deal with the remaining four main issues below.
5. The first three main issues relate largely to the effect of the appeal proposal on the character and appearance of the area and on the development potential of

adjoining sites and the appeal scheme's relationship with the potential comprehensive redevelopment of a greater area including the former Middlesex University site. Matters of these types can be subjective and require the application of planning judgement. In this case the appellant considered that no harm would arise as a result of the proposed development in regard to each of these main issues.

6. While I disagree with the appellant's conclusions on these matters, I consider that a substantive and reasonably comprehensive case was made in respect to each of these by the appellant as part of the appeal process, and that the submitted documents, along with what was said at the hearing, provide sufficient realistic and specific evidence.
7. The fourth main issue concerns viability and affordable housing. In this regard the appellant relied on a viability assessment that was submitted at the planning application stage¹. The Council commissioned its own assessment prior to the application's determination² but this appears to have been communicated to the appellant only as part of the appeal process after the appellant's appeal statement was submitted.
8. Shortly before the hearing the Council submitted further evidence regarding, among other things, estimated build costs for the proposed development³. During the hearing the Council also introduced new evidence in that the market value used in the appellant's viability assessment does not take full account of relevant development plan policies, a point that had not previously been raised. These latter submissions were made late in the appeal process thus giving the appellant's representatives limited opportunity to reassess their position on this matter. On this basis alone I do not consider that the appellant's behaviour on this matter can be fairly characterised as being unreasonable.
9. There was no expert on viability matters present at the hearing on behalf of the appellant. The Council's submissions on this matter suggest that had it known this in advance its associated costs could have been avoided or at least reduced. There is no obligation on main parties to communicate who will attend a hearing on their behalf. I have also found no evidence that the Council actively sought this information from the appellant. In any event, as outlined above, I have found that the appellant's behaviour in respect to this matter was not unreasonable.
10. Taking all of the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and that an award of costs is not justified.

G D Jones

INSPECTOR

¹ Affordable Housing Viability Assessment, CgMs, July 2015

² Douglas Birt Consulting letter and Appendix, dated 26 August 2015

³ Report on the Development of 216 High Street, S Robertshaw Consulting Ltd, dated 15 August 2016