

Costs Decision

Hearing held on 12 October 2016

Site visit made on 13 October 2016

by Kenneth Stone BSc (Hons) DipTP MRTPI

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

Decision date: 16 November 2016

Costs application in relation to Appeal Ref: APP/E5330/W/16/3145602 The Hunstman Sportsclub, Manor Way, Blackheath, Greenwich SE3 9AJ

- 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 Derreb Limited for a full award of costs against Royal Borough of Greenwich Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for 'residential development of 130 units comprising detached houses, terraced houses and apartments'.
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Decision

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

The submissions for Derreb Limited

2. The appellant makes a claim for a full award of costs on the basis of the lack of co-operation by the Council, delay in providing information and adhering to deadlines and the introduction of fresh and substantial evidence at a late stage in the process necessitating extra expense in preparatory work. The appellant also claims the Council has provided vague and generalised assertions about the proposals and that the Council has failed to give proper explanation as to why permission was not granted within the relevant period.
 3. The appellant asserts that the Council have failed to provide evidence to justify its claim that the retirement village alternative use value was inappropriate and had not raised this issue previously. The exceptional costs had been properly identified and the Council had not used professional services to support its concerns. Again these costs had been before the Council in previous applications and appeals and had not been questioned. Thirdly the Council produces no local evidence to support its concerns about the level of developer profit. Cumulatively the Council produced no evidence to support its concerns about the viability assessment and the level of supportable affordable housing.
 4. The appellant made the costs claim in writing before the hearing and whilst this was introduced at the hearing no further substantive additions were made other than to conclude that nothing in the hearing had changed the position of the appellant in the claim.
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The response by Royal Borough of Greenwich Council

5. The Council had provided a written response to the initial claim and similarly this was not substantively added to at the hearing.
6. The Council refute the appellant's claim for costs on all grounds and suggest that the appellant has not engaged with the Council. This is evidenced by the failure to engage in pre-application discussions which are open to applicants and the move to appeal. The Council provided a response to the appellant's viability assessment in a letter dated 4th February 2016. The Council did not consider the appellant's response of 12th February addressed the concerns that were raised, and informed the appellant of this. The appellant rather than engaging with the Council chose to appeal. The Council further contend that the board report and Statement of Case fully set out the Council's case and the policy basis on which the decision was taken to fight the appeal.
7. The Council are of the opinion that had the appellant engaged in pre-application discussions the concerns about the viability assessment could have been aired. They are further of the view that the matters which the appellant says were agreed were not so and had not been agreed in previous applications or appeals.

Reasons

8. The Government's Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
9. It is evident that the appellant has been seeking to bring forward development on this site for a number of years. Whilst an initial application was found unacceptable by the Council and at appeal, a subsequent application was provided with a positive resolution (14/1585/F) subject to the completion of a satisfactory planning obligation. The terms of that obligation could not be agreed and the matter went to appeal (APP/E5330/W/15/3006475). The appeal was dismissed.
10. In the context of this application again the Council has not objected to the basis of the scheme but has raised concerns about the viability assessment underpinning the planning obligation and the fact the obligation does not provide an adequate level of affordable housing.
11. The Council have identified three principle areas in which the viability assessment failed and these were the substance of the appeal. The appellant is of the view that these matters were agreed in the previous application and appeal and it was therefore wrong for the Council to reconsider these matters.
12. I have two issues with that approach. Firstly each application is to be treated on its own merits and the circumstances, policies and details of the case pertaining at that time. And secondly, that there is no substantive evidence that those matters were positively agreed and accepted. Agreement by omission or not referencing is not agreement to the position. The matters brought before the previous Inspector did not focus on the issues before me and were not at the heart of his discussions or his conclusions. There is therefore no direct evidence that he gave detailed consideration to and accepted the basis of those matters.

13. A lot of the appellant's case is based in the misguided position that it is not open to the Council to consider all matters a fresh. In a worst case scenario this would require it to compound a mistake it had previously made. It is open to the Council on a new application to consider all aspects of that application a fresh. There is however also an obligation on the Council to ensure that it applies policies and arrives at conclusions consistently and for the right reasons.
14. I have considered the detail of the matters and balanced the evidence submitted in relation to the appeal decision and a costs application is not to re-run those deliberations but to consider the reasonableness of the approach of the party. Whilst the appellant appealed before the putative reasons for refusal were formulated they had been given prior indication of the Council's areas of concern. These were then brought forward in the putative reasons for refusal. The matters between the parties were relatively narrow and the nature of the production of evidence could be focused. The Council had its independent advisor at the hearing to substantiate the matters that were in the Council's statement and to support them where appropriate.
15. The excessive reliance on seeking to refer to the Berkeley Homes development on an adjacent site was misdirected by the appellant as this is not a comparable development to that which the appellant was promoting. In this context this does not add substantively to the evidence submitted by the appellant. I found the policies referred to by the Council relevant and appropriate and their application and interpretation reasonable. On this basis I do not find that the Council acted unreasonably in resisting the proposals for the putative reasons. On the basis of seeking to ensure that sustainable development came forward and that there was the maximum reasonable amount of affordable housing provided the Council were not unreasonable in seeking to resist the development. Whilst the Council could potentially have come to this conclusion earlier there is no evidence that the appellant would have sought to address it in any other way than that before the appeal. On that basis there is no evidence that the appeal could have been averted and cost or expense averted.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Kenneth Stone

INSPECTOR