
Costs Decision

Site visit made on 26 June 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 27 July 2017

Costs application in relation to Appeal Ref: APP/W5780/W/17/3170276 463 - 489 High Road, Ilford IG1 1TX

- 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 Mr S Majeed (City Sports) for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal of planning permission for erection of 4 storey building to provide 25 (10 x one bedroom, 15 x two bedroom) units with associated car parking and landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. The application for costs seeks a full award on substantive grounds¹.
3. The appellant states that the Council was unreasonable in refusing an application where their own professional advisers, BNP Paribas (BNP) recommended the appeal scheme would generate a surplus of £340,000² and the appellant had made a cash-in-lieu offer of £340,000 for affordable housing. This offer was made prior to the time of the Council's decision. The appellant also states that no opportunity was given by the Council to enable them to review the appellant's viability report³ and the Council's BNP viability report to come to a professional conclusion about the viability of the appeal scheme.
4. The Council contends that the affordable housing contribution would fail to reflect the identified significant and unmet need for affordable housing in the Council's Strategic Housing Market Assessment and the unmet demand for affordable housing resulting in adverse social consequences, and as such fails to meet the social dimension of sustainable development in the National Planning Policy Framework (the Framework).
5. However, in accordance with Policies 3.11 and 3.12 of the London Plan 2016, it has been demonstrated that the sum of £340,000 contained within the

¹ Planning Practice Guidance: Paragraph 049 Reference ID 16-049-20140306

² BNP Paribas Affordable Housing and Economic Viability Assessment December 2016

³ Bespoke Property Consultants Development Viability Report September 2016

appellant's S106 Unilateral Undertaking represents the maximum reasonable amount of affordable housing contribution arising from the appeal proposal. In doing so, the proposal would also accord with Strategic Policy 8 of the Council's Core Strategy 2008 that states negotiations to achieve an affordable housing provision on housing development should, amongst other things, have regard to the economics of providing affordable housing on a site.

6. An affordable housing contribution higher than £340,000 would render the scheme economically unviable and on this basis it is likely that the identified benefits arising from the proposal would not be realised. This would be contrary to paragraph 173 of the Framework, which seeks to provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
7. In light of my assessment of the evidence before me, I share the appellant's view that the Council acted unreasonably in this case in refusing the application when the appellant had made a cash-in-lieu offer of £340,000 for affordable housing in line with the Council's own professional adviser's viability report. Whilst I recognise that this is only advice and the Council can make their own decision on such matters, any negotiations would need to take into account the economic viability and deliverability of the site in line with both national and local planning policies, which in this case I consider was not satisfactorily addressed by the Council in making its final decision on this proposal.
8. For the reasons explained above, I am of the view that the appellant has incurred unnecessary and wasted expense. As a result, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that the London Borough of Redbridge shall pay to Mr S Majeed (City Sports) the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to London Borough of Redbridge, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Troy

INSPECTOR