The Planning Inspectorate

Costs Decisions

Inquiry Held on 4 June 2019 & Site visit made on 12 June 2019

by S R G Baird BA (Hons) MRTPI

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

Decision date: 26th June 2019

Costs application 1 in relation to Appeal Ref: APP/G5180/W/18/3206569
Land to the rear of the former Dylon International Premises, Station Approach, Lower Sydenham, London SE26 5BQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Council of the London Borough of Bromley for a full award of costs against Relta Limited and Dylon 2 Limited.
- The inquiry 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 the demolition of the existing buildings and the redevelopment of the site by the erection of a 4 to 8-story development comprising 151 residential units (63, one-bedroom; 80, 2-bedroom & 8, 3-bedroom) together with the construction of an estate road, ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.

Costs application 2 in relation to Appeal Ref: APP/G5180/W/18/3206569
Land to the rear of the former Dylon International Premises, Station Approach, Lower Sydenham, London SE26 5BQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Relta Limited and Dylon 2 Limited for a partial award of costs against the Council of the London Borough of Bromley.
- The inquiry 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 the demolition of the existing buildings and the redevelopment of the site by the erection of a 4 to 8-story development comprising 151 residential units (63, one-bedroom; 80, 2-bedroom & 8, 3-bedroom) together with the construction of an estate road, ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.

Costs application 3 in relation to Appeal Ref: APP/G5180/W/18/3206569
Land to the rear of the former Dylon International Premises, Station Approach, Lower Sydenham, London SE26 5BQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the Council of the London Borough of Bromley for a partial award of costs against Relta Limited and Dylon 2 Limited.
- The inquiry 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 the demolition of the existing buildings and the redevelopment of the site by the erection of a 4 to 8-story development comprising 151 residential units (63, one-bedroom; 80, 2-bedroom & 8, 3-bedroom) together with the construction of an estate road, ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public

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Preliminary Matters

1. 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.

2. The costs applications, responses and final responses were submitted in writing. No additional points were made orally. Accordingly, the cases of the parties have not been rehearsed

COST APPLICATION 1

Decision

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

Reasons

4. The scheme before me is, in scale, mass, design and layout, a fundamentally different to that considered on appeal in 2016[1]. Whilst the development proposed is inappropriate development, MOL policy is not a bar to development. What MOL policy does is set a high threshold that a development has to cross. The threshold is that such development should not be permitted except in very special circumstances (VSC). VSCs will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

5. In 2016, the Inspector dismissed the appeal on the basis that the harm caused through inappropriate development, loss of openness and to the character and appearance of the area was not outweighed by other considerations and therefore VSCs did not exist. At that time, the weight attached to the other considerations was a matter for her judgement as is the weight I attach to the other considerations in this case is a matter for my planning judgement. Given her conclusions as to the effect on the character and appearance of the area, that MOL policy is not a bar to development and the fundamental redesign of the scheme, the fact that the appellants sought their revised scheme tested again does not amount to unreasonable behaviour.

COST APPLICATION 2

Decision

6. The application for a partial award of costs is refused.

Reasons

7. Whilst PPG[2] indicates that as a matter of good practice costs applications should be made in writing before an inquiry, the only stipulation that PPG makes is that the application must be formally made to the Inspector before the is closed. Thus, on its own, making an application during the inquiry would not amount to unreasonable behaviour.

8. Prior to the inquiry opening, the parties were advised that one of the issues to be addressed was whether the local planning authority could demonstrate a 5-year housing land supply (HLS). The appellants challenged the contribution to

[1] APP/G5180/W/16/3144248
[2] Paragraph: 035 Reference ID: 16-035-20161210

the HLS from: allocated sites; large sites with planning permission/commenced; non self-contained units, small sites started and windfalls including office to residential conversions. When it came down to it my conclusion that the lpa could not sustain a 5-year supply did not need to address the area of supply relating to small sites and windfalls including office to residential conversions. The National Planning Policy Framework (Framework) indicates that a site with outline planning permission for major development or a site allocated in the development plan can be included within the 5-year HLS. However, there is no presumption of deliverability and the lpa must justify their inclusion with clear evidence that completions will begin within 5 years.

9. In this case the lpa produced its evidence on deliverability largely based on the conclusions of the Inspector who examined the Bromley Local Plan. The examinations were held in December 2017 and the Inspector's report published in December 2018. Between these dates, 2 appeal decisions[3] were issued, which cast doubt on the lpa's ability to demonstrate a 5-year HLS. As I understand it, the local plan Inspector was forwarded a copy of the Maybrey Works decision. Until it is determined otherwise, I will work on the understanding that the Inspector took this decision into account in coming to her conclusions. As such, the lpa did not act unreasonably in preferring her conclusions over the earlier Maybrey Works decision.

10. Notwithstanding the above conclusion this appeal was to be determined having regard to the 2019 Framework definition of deliverability, which places the onus on the lpa to provide clear evidence. The lpa's evidence on the deliverability of the disputed sites was discussed in detail at the inquiry. Whilst I have found that the lpa's evidence did not provide the clear evidence required by the Framework, that is a matter of professional judgement. Accordingly, I conclude that the lpa did not act unreasonably.

COST APPLICATION 3

Decision

11. The application for a partial award of costs is refused.

Reasons

12. Whilst PPG indicates that as a matter of good practice, costs applications should be made in writing before the inquiry, it is not a bar to a party making an application at the inquiry. The inquiry was scheduled to last 8 days and the fact that the majority of the business was completed in 6 is a testament to the diligence of the advocates and the ability to take much of the evidence as read. That said, the inquiry was not closed rather it was, by agreement, adjourned to allow for outstanding matters, including the appellant's costs application to be submitted. In any event, the lpa would have had to respond to the appellants' application whether orally at the inquiry or in writing during the adjournment. In this context, I consider the lpa was not put to unnecessary additional expense or that the appellants acted unreasonably.

George Baird

Inspector

[3] APP/G5180/W/17/3174961 South Eden Park Road & APP/G5189/W/17/3181977 Maybrey Works.