



---

## Costs Decision

Inquiry opened on 26 March 2019

Site visit made on 7 June 2019

**by Paul Jackson B Arch (Hons) RIBA**

**an Inspector appointed by the Secretary of State**

**Decision date: 16<sup>th</sup> July 2019**

---

### **Costs application in relation to Appeal Ref: APP/G2245/W/18/3200270 Swanley Square Shopping Centre, London Road, Swanley BR8 7TG**

- 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 U+I Group plc for a partial award of costs against Sevenoaks District Council.
  - The inquiry was in connection with an appeal against the refusal of Sevenoaks District Council to grant planning permission for a revised hybrid application for the phased redevelopment of part of the Swanley Square Shopping Centre and land to the rear, comprising a detailed application for Blocks 1, 2 and 4 and an outline only application (with details relating to appearance and landscaping reserved) for Blocks 3, 5, 6 and 7. Blocks 1, 2 and 4 comprise the erection of three buildings ranging between 3 and 11 storeys in height comprising 210 residential units (build to rent and market), 1457 square metres (sqm) of retail/commercial floorspace (Use Class A1-A5, B1), a multi storey car park and associated public realm surface level parking, landscaping and access works. Blocks 3, 5, 6 and 7 involves the demolition of existing buildings/structures and outline parameters for four new buildings which will comprise up to 93 residential units (market) and up to 2,861 sqm of commercial floorspace (use classes A1-A5, B1) up to 958sqm of community floorspace; and associated public realm surface level car parking, landscaping and access works.
- 

### **Decision**

1. The application is allowed in the terms set out below in the Formal Decision and Costs Order.

### **The submissions for U+I Group plc**

2. The submission was made in writing. The appellant seeks an award for the abortive costs of attending the first day of the inquiry on 26 March 2019, which had to be adjourned as a result of the Council's failure to properly or lawfully notify the public of the appeal. The appellant's case relies on the Council's notification letter dated 6 February 2019. This letter expressly stated that spaces would be limited and it gave a clear message that prior registration was required, and that such registration must be completed by the stipulated date. This had major implications in terms of public attendance, as became clear on day 1 of the inquiry. It was the view of both main parties that the inquiry could not proceed. An adjournment was inevitable in order to allow the inquiry to proceed lawfully.
3. There is no basis in procedural rules or planning guidance for such a prior registration procedure or "limited space" constraint to public inquiries. It is

---

fundamental to the nature of a public inquiry that it is open to the public, and there should be no limitation on who can attend, such as by imposing a prior registration system or warning that spaces are "limited". People wishing to attend should be able to do so without registering beforehand, and without fear that they may not qualify for a "limited" space. The appellant's costs of attending the adjourned day 1 of the inquiry were wasted and are claimed in this application.

4. The appellant also claims their costs of having to deal with all the matters that have arisen since the 26 March 2019 adjournment because if the Inquiry had been adjourned then these costs would not have arisen, as follows:
  - Dealing with the new LPA position on the 5 year housing land supply. This necessitated a written response from the appellant, in the form of a briefing note.
  - Unnecessarily protracted section 106 and conditions negotiations from March to June 2019.
  - Pre-inquiry conferences attended by the appellant's team in May 2019.

**The response by Sevenoaks District Council.**

5. There was no failure by the Council to comply with the proper procedure to notify interested parties of the appeal or the appeal venue. Once it had been decided that the appeal would be held by way of public inquiry, the Council sent out 'Notification of Appeal Venue' letters dated 6th February 2019. It is right to concede that there is an element of ambiguity in the notification letter. It could be that the latter phrase in the first paragraph referring to 'spaces limited' could be read as the number of "persons attending to give evidence" being restricted, and therefore asking that the Council be advised of this. However, importantly, it is not unambiguously telling people that they have to pre-register otherwise they will be denied entry or the ability to speak.
6. A costs application has to involve unreasonable behaviour. Whilst the letter is not happily worded, the objective behind it was overtly reasonable in trying to ensure that local residents could be safely and comfortably seated in an appropriately sized room. The letter had the good intention of removing some guesswork.
7. Reference to "limited space" was a matter of fact in that the venue had a limited capacity, significantly less than the number of representations (more than 500) made as part of the process of considering the planning application. It was not an unreasonable action. It was not done recklessly. It was done in good faith with a laudable objective. It had an unintended side effect. The costs regime is a very useful tool in the planning process but it was not put in place to punish any party for an inadvertent slip such as has occurred here.
8. The submission version of the Local Plan was submitted on 30 April 2019 and was accompanied by a 5 Year Supply of Deliverable Housing Sites. It would have been necessary to inform the Inspector of these two developments in any event and the appellants could have chosen to reply. The adjournment has not created the need for the appellant's briefing note.
9. Negotiations relating to the s106 agreement and conditions would have needed to be carried out prior to the closing of the original inquiry. The appellant has

---

therefore expended no more time on this than would have been required without the adjournment.

10. The Council understands that pre-Inquiry conferences are necessary in the lead up to an inquiry. However, little had changed in terms of the matters relating to the appeal between 26 March 2019 and 4 June 2019 and so there would have been little for the appellant's team to discuss.

## **Reasons**

11. Planning Practice Guidance (PPG) advises 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. The PPG says that local authorities are at risk of an award of costs if they fail to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.
12. Whilst the intention of the Council was to ensure that a room of sufficient size was provided for the Inquiry, the requirement to register for 'health and safety reasons' required members of the public to contact the Council using the contact information provided. It was stated at the start of the Inquiry by members of the public that some people who had wished to attend, to listen or to give evidence, could not do so because either the contact number provided was not answered, or there was no response to emails sent to the email address provided.
13. This meant that it was likely that there were people who had not attended because they had been unsuccessful in registering. In any event, even if prospective attendees had been successful in registering, the text of the Council's note is that at the Inquiry, 'there will be spaces limited'. That would, unintentionally, have sent the message that a restriction would be placed on numbers. However, there is nothing in the Inquiry Procedure Rules that suggests that numbers attending an Inquiry should be controlled. The Inspectorate's Procedural Guide<sup>1</sup> advises that local people are encouraged to take part in the inquiry process. That would especially be the case where people's living conditions were a matter at issue, as here.
14. Accordingly, the Council's behaviour in issuing such a notice, however well-intentioned, led to the adjournment to 4 June. It is appreciated that the intention was laudable, but the effect was entirely foreseeable. The Council might have avoided an award of costs had it not been evident on the first day that members of the public had been unable to follow the Council's suggested procedure because the telephone was not answered, or emails were not replied to. After putting in place a procedure, and knowing the level of interest, the failure to properly deal with requests for 'registration' amounted to unreasonable behaviour.
15. Turning to the remaining grounds for an award of costs, the differences between the parties on housing supply did not change substantially between February 2019 (the date of the Lichfields study CD38) and the end of April. The parties had prepared submissions on this matter for consideration by the Inspector on the first day. Nothing arose in respect of the S106 Agreement that would not have arisen later and would have needed dealing with. The

---

<sup>1</sup> March 2019

---

telephone conversations and meetings necessary were helpful in firming up the parties' positions and potentially identifying areas of common ground: and in my view led to a shortening of the Inquiry sitting time, to everyone's benefit. The evolution of policy, and the stages through which emerging Local Plans progress, may often need to be notified during an Inquiry and the subsequent decision-making process. I do not find that the appellant was involved in any unnecessary expense in respect of these matters.

### **Costs Order**

16. 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 Sevenoaks District Council shall pay to U+I Group plc the costs of the appeal proceedings described in the heading of this decision related to the costs of attending the Inquiry on the first day; such costs to be assessed in the Senior Courts Costs Office if not agreed. The Inquiry opened at 10:00 and was adjourned at 11:30.
17. The applicant is now invited to submit to Sevenoaks District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Paul Jackson*

INSPECTOR