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## Costs Decision

Inquiry Held on 19-23 October, 2-6 November, 9-13 November 2020

Site visits made on 17 and 31 October 2020

**by Christina Downes BSc DipTP MRTPI**

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

**Decision date: 25<sup>th</sup> January 2021**

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### **Costs application in relation to Appeal Ref: APP/Q4245/W/19/3243720 Land at Warburton Lane, Trafford**

- 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 Trafford Borough Council for an award of costs against Redrow Homes 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 a residential development of up to 400 dwellings, including the creation of new points of access, provision of formal and informal open space, ancillary landscaping, car parking and highway and drainage works.
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### **Decision**

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

### **Reasons**

2. The *Planning Practice Guidance* 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
3. Costs are being sought on the basis that the Appellant's viability case had no chance of succeeding. In this case the failure to provide affordable housing on the basis of viability was not the sole determinative issue and so I do not consider that the appeal itself was bound to fail. It was one factor in the overall planning balance and for that reason I have considered this application on the basis of a partial award. Many of the points made in the costs application and response seem to me to repeat matters of evidence. I have dealt with the planning merits in my appeal decision and do not repeat them here.
4. Benchmark Land Value (BLV) was a contested issue in the viability evidence. However, both the Applicant and the Appellant used the EUV+ approach endorsed by the Planning Practice Guidance. The + value is a matter of judgement and there is no requirement in the guidance that all costs must necessarily be taken into account when seeking to establish the minimum price that a landowner would accept. Whilst I did not agree with the BLV put forward by the Appellant in this case, that does not mean that it was unreasonable.
5. In terms of values, the Appellant's expert agreed that Glazebrook Meadows was a good comparator for the smaller dwellings. Whether Glazebrook was a superior location to the appeal site and the degree of influence of Partington on sales values at the appeal site are matters of professional judgement. Whilst I

have not agreed with the Appellant's expert witness on these points, his conclusions were not unreasonable. I note that they were supported by the expert reports commissioned independently by Redrow.

6. In terms of costs, it is clearly much easier to undertake an assessment with a full planning application. However, outline applications are commonplace for larger development proposals and affordable housing provision has to be determined at this stage. In such circumstances the information will be less clear and involve assumptions. The value of such assumptions will depend on the basis on which they are made. In this case I am satisfied that the Appellant's costs expert had a wide experience and that he acted in accordance with his professional obligations.
7. I do not consider that there is evidence that there was a deliberate attempt to inflate costs, indeed that would be contrary to the RICS Code of Conduct. I have concluded that a conservative approach was taken, and I agreed with the Council that it is likely that costs savings would be made through value engineering, amongst other things. However, there is no right or wrong answer as certainty would only be provided once the scheme has been worked up in detail. I have indicated that it would have been a good idea to ask Redrow about their approach to costs savings, but a reason was given as to why this was not considered appropriate. To my mind it was a credible explanation.
8. There were three days of viability evidence at the inquiry and virtually no agreement on any of it. It seems to me that the forensic examination by the Applicant was bound to reveal some errors and areas that were not as robust as they could have been. However, this was certainly not helped by the antagonism of the expert witnesses to each other and the resultant failure to obtain any degree of co-operation. Although the costs application is made against the Appellant, the Applicant must take its fair share of responsibility for this unfortunate state of affairs. As I have indicated in my decision, I consider that this was at least in part due to broader issues going on in the Borough that had little relevance to this appeal.
9. I do not consider it necessary to go through each point made by the Applicant and rebutted by the Appellant. Much of it, as I indicated above, is a repeat of the planning merits raised at the inquiry and which I have considered, where necessary, in my appeal decision. Standing back, and considering the evidence overall, I do not conclude that unreasonable behaviour has been demonstrated. It follows that unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been incurred.

*Christina Downes*

INSPECTOR