



Costs Decision

Hearing Held on 26 and 27 January 2021

Site visit made on 28 January 2021

by David Cliff BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2021

Costs application in relation to Appeal Ref: APP/E5330/W/20/3250670 260 Eltham High Street, Eltham, London SE9 1AA

- 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 Royal Borough of Greenwich Council for a partial award of costs against Quanta Homes.
 - The hearing was in connection with an appeal against the refusal of planning permission for the proposal described in the application form as 'demolition of existing commercial buildings and erection of 4 buildings to provide 4,000 sq.ft. of commercial floor space and 70 residential apartments, landscaping, car parking and associated development'.
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Decision

1. The application is refused.

Procedural matter

2. The application for costs was submitted in writing during the course of the hearing. Taking into account time constraints at the hearing, it was agreed that both the appellant's and the Council's subsequent responses could be made in writing following the hearing. The matter proceeded on that basis.
3. As set out in my separate appeal decision, the application description was amended following the submission of the application to reflect the reduction in the number of proposed residential units from 70 to 67.

Reasons

4. The Government's Planning Practice Guidance (PPG) advises that parties in appeal proceedings normally meet their own costs, but costs may be awarded against a party who has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. The PPG also advises that before making any appeal the party seeking permission should firstly consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more acceptable and likely to gain permission.
6. The Council considers that the appellant acted unreasonably by submitting a substantial amount of revised information at appeal stage in order to address the reasons for refusal, forcing the Council to re-consider its grounds for refusal. This led to Council officers requiring additional time including to assess

the further information and amendments. The Council states that this adds up to extra time taken over the appeal and that it is fundamentally down to the unreasonable behaviour of the appellant in refusing to engage with the Council earlier in the process.

7. In this case there was a fairly lengthy period between the submission of and the start date of the appeal, caused by delays arising from the Covid-19 pandemic. The appellant submitted further information and amendments on 30 July 2021, approximately three and a half months after lodging the appeal. As set out in my separate appeal decision, I have considered this material as part of the appeal. Although several revisions and documents were provided as part of the updated material, it did not fundamentally or substantially alter the scheme though it did subsequently result in the narrowing of the relevant issues needing to be considered at the hearing.
8. Further information was subsequently submitted by the appellant in response to the receipt of the Council's most up to date statement of case in early January 2021. The appellant provided a further response including a response to the information requested in my pre-hearing note for clarification on the matters where there is disagreement regarding five year housing land supply matters.
9. It is not uncommon for additional information to be provided following the submission of an appeal in order to seek to narrow or clarify relevant matters. In this case as there was sufficient time for all parties to engage with and respond to this material it was accepted as part of the appeal. The circumstances of this appeal are slightly unusual given the considerable amount of time that elapsed between the submission of the appeal and the starting date. It seems sensible that this time was used to seek to gain agreement on matters in order to narrow the outstanding issues to be considered as part of the appeal, particularly where this can be done without fundamental or substantial alterations to the scheme.
10. The Council considers that the material submitted by the appellant in July could have been provided at the application stage and that the Council's case officer offered to work with the appellant to address issues and concerns that were later raised in the Council's reasons for refusal. I note revisions had already been made to the application following submission leading to the reduction in the number of units proposed. Furthermore, it is not clear to me which matters and in what detail were put to the appellant during the application stage. I cannot be certain that all the matters to which the appellant sought resolution in its July submissions directly related to matters specifically raised by the Council during its consideration of the application. The information provided also generally appears to be an update of previously submitted information rather than entirely new submissions. Therefore it is not clear that this is a case where the appellant has only supplied relevant information at appeal when it was requested, but not provided, at application stage.
11. Prior to the deadline for interested party submissions, the appellant carried out its own consultation on the further material provided. This was important in my decision to accept the additional material given that it provided an opportunity for interested parties to engage with it and provide written and/or oral submissions. This enabled the material to be considered as part of the appeal. The Council had already had a considerable amount of time to consider the

material. Whilst the Council had to respond to the additional material, given that the scheme was not substantially changed and time available, this is reasonable as part of its overall response to the appeal. As such, I don't find that the appellant acted unreasonably in seeking to narrow the issues under consideration at the appeal.

12. It was also helpful for a further response to be provided to the evidence provided in the Council's statement of case regarding five year housing supply in order to clarify and narrow the scope of matters requiring discussion at the hearing, as requested in my pre-hearing note. Although further information was also provided at this stage it was relatively minor in nature.

Conclusion

13. I conclude that for the reasons set out above, unreasonable behaviour has not been demonstrated. An award of costs is therefore not justified.

David Cliff

INSPECTOR