The Planning Inspectorate

Costs Decisions

Inquiry Held on 15-22 December 2020
Site visit made on 16 March 2021

by Paul Singleton BSc MA MRTPI

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

Decision date: 29 March 2021

Application A
Costs application in relation to Appeal Ref: APP/G5180/W/20/3257010
Footzie Social Club, 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 Dylon 2 Limited for a full 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 planning permission for demolition of the existing buildings and redevelopment of the site by the erection of a four to eleven storey development comprising 254 residential units (130 one bedroom; 107 two bedroom and 17 three bedroom) together with the construction of an estate road and ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.

Application B
Costs application in relation to Appeal Ref: APP/G5180/W/20/3257010
Footzie Social Club, 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 Council of the London Borough of Bromley for a partial award of costs against 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 planning permission for demolition of the existing buildings and redevelopment of the site by the erection of a four to eleven storey development comprising 254 residential units (130 one bedroom; 107 two bedroom and 17 three bedroom) together with the construction of an estate road and ancillary car and cycle parking and the landscaping of the east part of the site to form open space accessible to the public.

Decisions

1. Application A for a full award of costs against the Council of the London Borough of Bromley (the Council) is refused.

2. Application B for a partial award of costs against Dylon 2 Limited is refused.

Application A

The submissions for Dylon 2 Limited

3. The application is made on both procedural and substantive grounds and a full award of costs is warranted because of unreasonable behaviour in the Council's unnecessary pursuit of the appeal to the inquiry stage. The resolution to resist the appeal was passed without any debate. It was also passed without proper consideration of the weight to be given to the market and affordable housing that would be delivered by the appeal scheme, in light of the Council's inability to demonstrate a 5 year housing land supply (HLS). The Council failed to acknowledge the presumption in favour of sustainable development arising from the absence of a 5 year HLS.

4. The necessary planning balancing exercise could have been undertaken on the basis of Dyson 2 Limited's proposal (at that stage) to provide 35% affordable housing (AH) with tenure to be agreed at a later stage. The Council could have resolved to approve the planning application subject to a legal agreement (or a planning condition) requiring a detailed AH scheme at a later date. It was, therefore, unreasonable for the Council to pursue putative Reason for Refusal (RfR) 1.

5. In resolving to pursue putative RfR 2, the Council failed to have proper regard to the 2019 appeal decision and material changes in the development context of the site. The Council chose to oppose the appeal on design grounds despite having resisted requests that it commission an independent design review of the scheme. It has also failed to produce any substantive design evidence to substantiate RfR 2. The Council's objections regarding the effect on living conditions were 'make-weight' historic objections that were resolved in the 2019 appeal decision.

6. Notwithstanding repeated requests before the date for exchange of evidence, the Council declined to release information concerning its decision to approve another residential development within the Borough with zero AH provision. As the circumstances of that approval are directly relevant to issues before the inquiry, the Council failed to act consistently in its decision making and to discharge its duties to the inquiry. The Council's witnesses in respect of viability submitted evidence to the inquiry which is inconsistent with their professional advice on other residential developments including in relation to the approved Dylon 1 development.

The response by the Council

7. The planning application included scant information re AH and, despite repeated requests, Dylon 2 Limited refused to be drawn on what tenure mix was to be provided. This meant that the viability of the AH offer could not be assessed. As a policy compliant AH provision had not been proposed, Bromley Local Plan (BLP) Policy 2 required the submission of a Financial Viability Assessment (FVA) to justify an alternative tenure mix. Neither the FVA nor any additional information as to the proposed tenure mix had been provided by the end of the statutory period for determination of the application.

8. At the end of that period, the Council made it clear that it wanted to continue discussions in the hope of reaching agreement on this issue and there was no need for an appeal to be lodged. The appellant's decisions to appeal, and to

delay outlining its detailed case on AH and viability until late in the process, amounted to an attempt to bypass the responsibility of the Council, and of the Greater London Authority (GLA) as strategic planning authority, to assess a key planning issue in the public interest. This is not how the planning system is intended to operate.

9. At the Council's Planning Committee in September 2020, there was a contribution from the ward member and an opportunity for other members to ask questions before moving to a vote. The members resolved to accept the officers' recommendations. The Chairman's decision to take the report on the 5 year HLS position before that on the appeal proposal meant that members were fully aware of the lack of a 5 year HLS when they considered the appealed application.

10. In the absence of the necessary information on AH tenure mix and viability, it would have been wrong for the Council to agree to defer the assessment of the viability of the scheme to a point after passing a resolution to grant planning permission. The planning balance assessment could not have been undertaken on this basis. The approach taken in respect of the appeal decision in the South Eden Park Road scheme provides no support for the appellant's contention that the AH issue could have been dealt with by a planning condition, thereby rendering the appeal unnecessary.

11. The impact of the Crystal Palace FC (CPFC) covered pitch on local character is a matter of subjective judgement. There is no approval for high fencing around that site. The Council's assessment of the appeal proposal had full regard to the details of the scheme approved in the 2019 appeal decision. It was not required to undertake an independent design review and nothing in any policy or guidance suggest that it was unreasonable (for costs purposes) not to commission such a review. The Council's planning witness provided evidence to support the its concerns with regard to the design and impacts of the appeal scheme. The Council did not ignore Inspector Baird's findings with regard to single aspect units. It was not unreasonable for the Council to take issue with the increased proportion of such units in the appeal proposal.

12. Dylon 2 Limited's claim that it was unable to provide a FVA because of the economic uncertainty due to the Covid 19 pandemic has never been substantiated. All other residential developers who submitted applications during this period have, without exception, been able to particularise their case on viability. The mere fact that a party wishes to challenge the evidence of the other party does not mean that the costs jurisdiction is engaged.

Reasons

13. The Government's 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. There must be a causal link between the unreasonable behaviour and the unnecessary and wasted expenditure which is alleged in the application. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example by unreasonably refusing an application or by a failure to produce evidence to substantiate each reason for refusal on appeal.

14. Dylon 2 Limited's complaints about the lack of debate at the 24 September 2020 Planning Committee are not borne out by the transcript of the proceedings. These show that the meeting was addressed by Councillor Mellor, whose comments were supported by another ward member, and that the Chairman invited other members to comment. Councillor Mellor made a point of drawing the Committee's attention to the detailed report on the application and stated his assumption that all members had read this. The absence of further comments or questions from the Committee suggests that they considered that the report provided sufficient information for them to come to a view on the officer recommendations rather than a lack of interest in the case.

15. The Chairman decided to take the update report on the Council's 5 year HLS before the report on the appealed application. In my view, this demonstrates both his understanding of the relevance of the 5 year HLS to the Council's decision whether or not to oppose the appeal and his desire that members should have a clear understanding of the HLS position. The officer report fully explained the implications of the absence of a 5 year HLS in terms of the presumption in favour of sustainable development in section 11 of the National Planning Policy Framework (Framework). Paragraphs 6.1.2 and 6.1.3 of the report expressly advised members what the presumption means in terms of decision making and the relevant development plan policies. Paragraph 6.1.6 explained that the subsequent sections of the report set out the officers' assessment of the overall planning balance of the proposal, having regard to that presumption.

16. The report acknowledged that, in the 2019 appeal decision, the Inspector had attributed very substantial weight to the market housing and AH that would be provided and that the current scheme could potentially contribute to an uplift in housing and AH provision. The report noted that the AH offer in the 2019 appeal scheme had been fully policy compliant and explained that it was uncertain that the same benefit would be delivered by the current proposal because of the lack of a confirmed AH tenure or FVA.

17. These considerations were carried forward into section 8 of the report which set out the officers' conclusions, both on whether the very special circumstances needed to justify a grant of permission in the Metropolitan Open Land (MOL) had been demonstrated and on the planning balance. The report was both extensive and comprehensive. It provided more than sufficient information to enable the Committee to make its decision.

18. BLP Policy 2 states that, in negotiating AH provision, the Council will seek a tenure split of 60% social/affordable rented and 40% intermediate provision. The policy is clear that, where the proposed tenure split is not compliant with this preferred mix, the Council will require evidence in the form of a FVA to justify that alternative mix. Since both Policy 2 and the related London Plan policies were cited in the AH Statement that accompanied the application, the appellant was fully aware of the policy requirements when the application submission was being prepared. Despite Dylon 2 Limited's many protestations to the contrary, the absence of any firm proposal as to the AH tenure mix to be provided, and of a FVA to justify any proposed departure from the Council's preferred, meant that the application submission was not policy compliant in this regard.

19. In those circumstances, the Council was entitled to take the view that it had insufficient information to form any firm conclusions as to the weight to be given to the potential benefit of the AH, either in respect of the very special circumstances test or in the overall planning balance. The Council's decision to resist the appeal on the grounds set out in RfR 1 did not, therefore, constitute unreasonable behaviour.

20. Irrespective of the position that may have been adopted by the Council in the South Eden Park Road appeal, the condition attached to the permission granted on appeal (condition 25) required the submission of an AH scheme that met the policy requirements for a minimum of 35% of the units to be affordable and a mix that accorded with the Council's preferred 60:40 split. The absence from the Inspector's decision on that appeal of any detailed reasoning for the imposition of this condition suggests that its wording had been agreed by the parties.

21. That Inspector's use of that condition does not support Dylon 2 Limited's case that the Council should have been willing, at the application stage, to agree to a condition which left the AH tenure to be agreed at some subsequent date. The Planning Inspectorate does have a model condition in respect of AH. However, this is to be used in exceptional circumstances and in cases where the heads or principal terms of the legal agreement that is likely to be required under that condition have largely been agreed. That was clearly not the position at the time that the appeal was lodged.

22. The officer report included considerable detail on the planning history of the appeal site and on the key differences between the various proposals that had been submitted for its development. It also included a detailed comparison between the current proposal and the 2019 appeal scheme in terms of their relative height, scale and massing and their effects on the openness of the MOL. For example, paragraph 6.3.10 of that report states the officers' view that the "*proposed development would have a greater impact in terms of its scale and bulk when compared to the scheme allowed at appeal*."

23. Having regard to these many references, I can see no grounds for the assertion that the Council failed to have proper regard to the 2019 appeal decision. Given that the appellant had firmly rejected the GLA's suggestion about the redistribution of units from the north to the south block, I see no reason why the officers should be expected to have reported that possible revision of the scheme to the Committee.

24. The officer report noted that there are no new or emerging large scale developments in the townscape surrounding the site "*except the indoor and outdoor sports facilities at the National Westminster Sports Ground*". Although the appellant may have a different view as to how significant that change in the townscape context of the site has been, it is not correct to assert that the Council did not have regard to this change.

25. These matters were both taken up and expanded upon in Mr Bord's proof of evidence. In that proof, he set out his analysis of the impacts of the increased height, scale and massing of the proposal, both in respect of the scheme's acceptability in design terms and its effect on openness. That assessment was set very clearly within the framework of the form of development that had been found to be acceptable in the 2019 appeal scheme. The proof provides further information on the Council's decision to grant permission for the CPFC

covered pitch and the assessment that was made by officers of its likely effects on openness and available public views when recommending that application for approval. Mr Bord concluded that the covered pitch would not have a significant bearing on views into the appeal site or significantly affect the open character of the wider area, except along a section of Copers Cope Road. Those are matters of subjective judgement.

26. PPG advises that a local planning authority may be found to have acted unreasonably if it fails to produce evidence to substantiate each reason for refusal on appeal. PPG does not require that that evidence should itself be substantial or that it should be supported by an independent design review. What is required is that the LPA should produce evidence to demonstrate that it had some respectable basis for its reason for refusal. Although I have come to a different conclusion than Mr Bord in respect of putative RfR 2 in my determination of the appeal, I have no doubt that his evidence satisfies that requirement.

27. Standard 29 of the Mayor's Supplementary Planning Guidance (SPG) on Housing seeks that the number of single aspect units should be minimised. This requires an assessment of the scheme under consideration and of whether or not this meets the SPG requirement that the design should address issues such as noise, ventilation and daylight. The fact that Inspector Baird found the 2019 appeal scheme acceptable in this regard does not mean that a wholly different design for a much larger scheme on the same site should also be considered acceptable. The scheme has to be assessed on its own merits and this is what the Council did. The fact that I have come to a different conclusion in my appeal decision does not mean that the Council's assessment amounted to unreasonable behaviour.

28. The preparation of an FVA is normally informed by an assessment of costs and values achieved or adopted in other developments within the local area but the final assessment must be particular to the circumstances of the scheme under consideration. Where a consultant, such as Dr Lee, produces a large number of such appraisals over the course of a year it is to be expected that he will adopt different, and on some occasions seemingly contrasting, assumptions in respect of those different appraisals. At the appeal inquiry, Dr Lee provided a reasonable explanation for the alleged discrepancies put to him by counsel for the appellant. I do not agree that his evidence was inconsistent with his professional advice on other schemes unrelated to the appeal proposal. His explanation as to the different economic circumstances under which the Dylon 1 scheme was assessed was clear. I have accepted that explanation in reaching my conclusions on the viability of the appeal scheme.

29. Had the Council refused to make information available to the inquiry which it knew to be directly relevant to the issues in the appeal and directly contradictory to the case that it presented at the inquiry, that could have amounted to unreasonable behaviour on its part. I do not consider that that is what occurred in this case.

30. The Council agreed, in October 2020, to the removal of a condition on the South Eden Park Road planning permission that required AH to be provided as part of that development. That decision was taken by the Council in the particular circumstances of that case, having regard both to the FVA submitted by the applicant and the advice received from Boyer, its independent viability

expert. Scheme viability needs to be assessed in the particular circumstances of each case. The Council was entitled to come to the view that the circumstances relating to the South Eden Park Road development were not identical to those in respect of the appeal proposal. Having considered the viability evidence in that case, the Council resolved to accept a zero level of AH. That did not create a precedent in respect of the position it should adopt in relation to the appeal scheme. I do not accept that its reluctance to release what it considered to be financially sensitive information amounted to unreasonable behaviour.

31. Whether the Council should have published the Boyer report as a background paper at the time that the application was considered by the Planning Committee is a separate matter which is not for me to determine.

32. It may have been helpful for Dr Lee to have seen the Boyer report when preparing his evidence, so that he could have been aware of their assessment of the building programme in that scheme and how they had dealt with the issue of cost inflation. This may possibly have led to an earlier narrowing of the differences between the viability experts in the appeal. However, given the extent of those differences at the exchange of proofs, I cannot be certain that this would have been the case. Even if that information had been available at an earlier date, I am not persuaded that this would have had a significant effect in terms of the time needed for Mr Turner to produce his evidence for the inquiry. Hence, I do not find that the timing of the release of that report has caused the appellant to incur unnecessary or wasted expenditure in the preparation of its viability case.

Conclusions

33. For the reasons set out above I find that the Council's actions with regard to its decision to oppose the appeal and in producing evidence to substantiate its putative RfR do not amount to unreasonable behaviour. I also find that there was no unreasonable behaviour with regard to the timing of the Council's release of the Boyer report. The application for costs is, therefore, refused.

Application B

The submissions by the Council

34. The application is for a partial award of costs relating to the instruction of two of the Council's witnesses to prepare evidence on viability and act for the Council in the appeal. The appellant failed to provide the viability assessment required at the planning application stage. Its backloading of the viability evidence until a late stage in the appeal process was demonstrably unreasonable.

35. The late provision of this evidence caused the Council to incur additional expense in instructing these consultants at late notice. By misusing the appeal process, the appellant has evaded the expectation, in accordance with the Council's Planning Obligations Supplementary Planning Document (SPD), that it would pay the costs of any independent expert that the Council may need to appoint to review the appellant's FVA. Had the appellant provided the FVA at the application stage, the Council would not have incurred the costs of instructing these consultants. The extensive common ground agreed by the

close of the Inquiry could have been agreed at the application stage, taking these matters off the table by the time the appeal was lodged.

36. The appellant's Statement of Case did not comply with the guidance in the Planning Inspectorate's Procedural Guide in relation to Planning Appeals. It did not set out the full particulars of the appellant's case on AH and viability, it failed to contain full details of the relevant facts and planning arguments that the appellant intended to rely on and did not outline the methodology or assumptions to be used to support the viability case. The Statement included no meaningful disclosure of what became an unexpected and controversial case with regard to AH provision. As a result, the Council was not fully aware of the appellant's case, arguments and issues from the start. This represented a further failure to comply with the Procedural Guide and amounted to unreasonable behaviour.

Response by Dylon 2 Limited

37. As the Council had no viability expertise in house, the only circumstances in which it would not have had to call viability evidence would have been if all matters had been agreed. Dr Lee's evidence on the three main areas of difference between the parties on viability, the differences with regard to the Cost Plan and his evidence on First Homes (FH) all demonstrate that whatever might have been agreed before the Inquiry is immaterial, as these matters would always have been in dispute.

38. The appellant exercised its right of appeal some 7 weeks after the end of the statutory period available for the Council to determine the application. Prior to lodging the appeal, it had proposed that, if officers would recommend that permission be granted, the Council could pass a 'minded to approve' resolution, subject to completion of a S106 Agreement to cover the tenure of the AH. Alternatively, the Council could have attached a condition that required the submission of a scheme for the provision of AH which would include the details of the level and tenure of that provision. Both of these are established and accepted mechanisms for dealing with AH and a condition of this type was suggested by the Council in respect of the planning appeal for the South Eden Park Road development scheme.

39. The appellant was unable to submit detailed viability information either with the application, or at the time that the appeal was lodged, because of the economic uncertainties caused by the Covid 19 pandemic. As a result of the pandemic the RICS had, on 17 March 2020, introduced a requirement that Chartered Surveyors should include a statement regarding 'Material Valuation Uncertainty' in all valuations and FVAs, thereby rendering them of limited value. This was only lifted in mid-September 2020. Following the lifting of that requirement, the appellant's presentation of its viability case has been exemplary and in accordance with the deadlines set by the Inspector.

40. Having prepared an alternative costs plan, the Council's costs expert was then unavailable to attend the inquiry. This led the closing of the inquiry to be deferred and to additional costs being incurred by the appellant. The Council receives a planning fee when a planning application is made and is legally bound to determine the application on its merits. The Council's SPD is a non-statutory document which is not binding on the applicant. The SPD does not constitute the necessary authority for the Council to impose a charge for the instruction of external consultants to advise on viability assessments.

Reasons

41. The application was lodged on 2 March 2020. In the AH Statement that accompanied the application Dylon 2 Limited advised that 35.4% of the units would be affordable units and that these would all be accommodated in the south block. However, the Statement did not provide any information as to the proposed tenure mix of the AH or include any statement to the effect that this would be in accordance with the Council's preferred mix as set out in BLP Policy 2. Neither this Statement nor the Planning Statement accompanying the application, gave any indication that Dylon 2 Limited had concerns, at the time the application was made, about the viability of the proposal or that economic uncertainty, arising from the then emerging picture with regard to the Covid 19 pandemic, would make it impossible for a tenure mix to be agreed.

42. The AH Statement claimed the proposed AH provision is "*fully in accord*" with the relevant development plan policies and related SPDs. However, as set out in paragraph 18 above, Dylon 2 Limited should have known that this was not the case. Although it was fully aware of the requirement for a FVA to be submitted to support a non-policy compliant tenure mix, Dylon 2 Limited chose not to submit either a FVA or any detail as to what the mix might be.

43. In its email to West & Partners, dated the 20 April 2020, the GLA stated that it had been unable to find any information within the application as to the AH tenure mix. It requested that this should be provided. In his reply, Mr Francis advised only that the AH would be within the scope of the definition set out in the glossary to the Framework. He asserted that "*at the present time, with the new economic reality of Cov 19 we cannot go further than this.*" Thereafter, this same reason appears repeatedly to have been stated by Dylon 2 Limited for its failure to produce the required FVA until October 2020. However, the preparation of the planning application and accompanying documents predated the Government's announcement, on 23 March 2020, of the first Covid 19 lockdown and the introduction by the RICS of the requirement for valuations to include a Material Valuation Uncertainty statement.

44. Nothing in the evidence provides a reasonable explanation as to why a FVA was not submitted with the application. The failure to provide one left the Council in the position that it could not properly assess whether the proposal complied with Policy 2. It also had insufficient information to conclude what weight should be given to the AH provision in determining whether or not the MOL very special circumstances test had been met.

45. For the reasons set out in paragraph 21 above, I do not accept Dylon 2 Limited's contention that the matter could have been resolved either through a minded-to- approve resolution subject to the completion of a S106 agreement, or by a planning condition such as that attached to the permission for the South Eden Park Road development.

46. Dylon 2 Limited's Statement of Case provided only scant information about the case to be presented in respect of AH. Paragraph 2.9 states only that AH provision will be made in accordance with the definitions in the Framework and development plan and that, in light of unknown impacts of the Covid 19 pandemic, the tenure could not currently be specified. The Statement of Case gave no indication that the scheme might not provide 35% AH as had been claimed in the application or that the use of FH was being contemplated. These

possibilities were first outlined during the Case Management Conference on 12 October 2020.

47. I agree that this fell short of what is required in terms of setting out the full particulars of the appellant's case in accordance with the Procedural Guide. The appellant might not have formulated its final AH offer at that stage. However, given its reliance upon the economic uncertainties arising from the pandemic to justify its position with regard to scheme viability, it seems unlikely that, in July 2020, the appellant was not already contemplating an AH offer below the 35% level required under Policy 2.

48. Following on from the above, I find that Dylon 2 Limited acted unreasonably in failing, at the application stage, to provide any detail about the form of AH proposed and to submit a FVA to demonstrate what level of AH and tenure mix the scheme could support. Given the timing of the application, I do not accept that this can simply be excused by reference to the economic uncertainty arising from the Covid 19 pandemic. I also find that there was unreasonable behaviour on the appellant's part in its failure to set out full particulars of its likely case in relation to AH in its Statement of Case.

49. However, although I find that the failure to provide this information amounted to unreasonable behaviour, I am not persuaded that this has directly resulted in unnecessary or wasted expenditure on the Council's part.

50. As no FVA was submitted with the application it is impossible to know what conclusions this might have come to. The only information available is the FVA that was eventually provided by Dylon 2 Limited dated 21 October 2020. The findings of that FVA were that the scheme viability would not support a 35% level of AH and that it shows a deficit when assuming a policy compliant provision of AH. The FVA also concluded that, even with the 19% First Homes AH provision that the appellant offered at the appeal inquiry, the scheme still shows a deficit against the Benchmark Land Value.

51. When the Council's viability and building costs experts reviewed Dylon 2 Limited's FVA at the end of October, they challenged many of the assumptions both in the building cost plan and in the viability appraisal itself. Although these issues were narrowed through the discussions that I requested the parties should enter into, significant differences remained at the close of the inquiry.

52. The extent of the remaining differences gives me no confidence that the parties would have reached any agreement as to the level of AH to be provided, even had the FVA been submitted with the application. Given the strength of the case it presented at the inquiry, it seems unlikely that the Council would have accepted that a 19% FH provision would render the proposal compliant with LBP Policy 2. The Council's vehement opposition to the FH format as an acceptable form of AH provision in Bromley also indicates that it would have been extremely unlikely that the Council would have accepted this AH offer as being policy compliant. In my judgement, there would have been a strong likelihood that these matters would have been in contention at the appeal inquiry in any event.

53. For these reasons, I consider that, even if the FVA had been submitted at an earlier stage, viability and the maximum level of AH that could be delivered within the scheme would have remained a main issue in the appeal. The Council would, in those circumstances, still have found it necessary to instruct

appropriately qualified experts to deal with these matters. Dr Lee was the Council's witness both in respect of the acceptability in principle of FH and the scheme viability issues. As Dr Lee's evidence depended, in no small part, on Mr Brown's Construction Cost Review this evidence could not have been prepared without Mr Brown also having been instructed. I do not think it possible to disaggregate the inputs of either of the experts to reach some arbitrary view as to the extent of evidence that might have been needed had the FVA been available at an earlier date.

54. The Planning Obligations SPD seeks that applicants should fund the costs of external consultants that the Council may need to appoint to review FVAs. However, the SPD is not a policy document and does not provide the necessary legal authority for the Council to require such a contribution from the applicant. Even if that were the case, that contribution would not extend to the costs of instructing those consultants to prepare evidence for and to appear at any subsequent planning appeal inquiry. It is clear that Mr Brown's instruction did not extend beyond preparing a report as an input into Dr Lee's evidence since it transpired that the Council had not checked his availability for the agreed inquiry dates.

55. I accept that Dr Lee had to prepare his evidence in a relatively short time. However, the timetable agreed at the Case Management Conference expressly allowed him to have more time to prepare a full Proof of Evidence if he needed it; this additional time was not used. Neither has the Council produced any evidence to demonstrate that the actual time inputs required by Dr Lee to write his evidence were in any way affected by his not having earlier sight of the appellant's FVA.

56. The Council's application repeats concerns that were raised during the inquiry about the rebuttal evidence submitted by the appellants after the exchange of main proofs. That evidence was accepted into the inquiry for the reasons that I gave at that time. It was for the Council to decide how it should deal with it. I do not accept that the appellant's submission of rebuttal evidence has resulted in the Council incurring any unnecessary costs or expenditure in relation to the appeal.

Conclusions

57. For the reasons set out above, I find that Dylon 2 Limited acted unreasonably in its failure to provide any details of its proposed AH tenure mix and a FVA to support that offer, either at the planning application stage or in its Statement of Case. It has not, however, been demonstrated that this unreasonable behaviour has resulted in the Council incurring unnecessary or wasted expenditure in relation to the planning appeal. The application is, therefore, refused.

Paul Singleton

INSPECTOR