



Costs Decisions

Inquiry held on 19-22, and 25-29 January 2021

Site visits made on 12 January 2021 and 2 February 2021

by Peter Rose BA MRTPI DMS MCSI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2021

Costs applications in relation to Appeal Ref: APP/L5810/W/20/3249153 Arlington Works, 23-27 Arlington Road, Twickenham, TW1 2BB

- The applications are 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 applications are made by the Council of the London Borough of Richmond upon Thames for a full award of costs and, alternatively, for a partial award, against Sharpe Refinery Service Ltd.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for a scheme described as 'redevelopment of the site to provide 610sqm of commercial space (B Class) within existing Buildings of Townscape Merit plus a new build unit, 24 residential units (5 x 1 bedroom, 12 x 2 bedroom and 7 x 3 bedroom) and associated car parking and landscaping'.
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Decisions

1. The applications for full and partial awards of costs are refused.

The submissions for the Council

2. The appellant was unable to meet the compensatory provisions of Policy WLWP 2. The argument to avoid conflict with Policy LP 42 rested entirely on the contention that it was possible to move from existing uses to other activities in Class E. The appellant relied on a mis-reading of Policy E7 by which industrial land use could be intensified despite a substantial reduction in the industrial land in question. The appeal was therefore unreasonable, there was no real prospect of success and should not have been made.¹
3. Alternatively, a partial award is sought in respect of costs incurred in dealing with affordable housing and highways issues. Had the section 106 offer towards affordable housing been made at an earlier stage, the Council would not have needed to prepare a proof of evidence on this issue. Similarly, had the relevant information associated with the revised layout plan and related matters been made available earlier, the Council would not have been required to prepare highways evidence.

The response by Sharpe Refinery Service Ltd

4. It is not accepted that compensation should only be confined to oil waste or to sites within the Waste Plan area. The appellant took a diligent approach by contacting the Council and seeking clarity on these points as far back as 2018

¹ As per Planning Practice Guidance paragraph 053 Reference ID: 16-053-20140306

and acted in accordance with the authority's own advice. The appellant maintains the proposal to be policy compliant and would strengthen and intensify industrial use of the site. This would be reinforced by its proposed planning conditions.

5. In the spirit of active engagement and in accordance with the Inspector's instructions, the matters in dispute regarding affordable housing and highways implications were all narrowed in discussions prior to the Inquiry.

Reasons

Application for a full award

6. I have found the scheme falls significantly short of the development plan's expectations in relation to both waste site designation and industrial use. Whilst the appellant has pursued an application of compensatory waste policy with which I disagree, the approach taken did reflect previous informal advice from Council officers as expressly sought by the appellant.²
7. Further, waste and industrial policies, whilst highly relevant and very important to this case, still only form part of the wider development plan context. They also remain to be weighed as part of overall planning balances relative to other material considerations, including the appellant's perceived benefits of the proposal.
8. Although I find the appellant's application of policies to be flawed, I can appreciate why it chose to consider this was not a case where it necessarily had no reasonable prospect of succeeding. The proposal is clearly not in accordance with the development plan, but other material considerations have been advanced in favour of the scheme and with supporting evidence.³ In particular, the appellant has been driven by other perceived attributes of the development and the weight they should attract, including retention of some employment, improved commercial accommodation, housing benefits, a bespoke design, and environmental improvement for the local area.
9. In that context, and notwithstanding the clear conflict with the development plan as a whole and the harm arising, I do not find, on balance, the appellant's actions to have been unreasonable. Ultimately, decisions may be taken that depart from an up-to-date development plan, but only if material considerations in a particular case indicate the plan should not be followed.⁴

Application for partial awards

10. The Planning Practice Guidance and the Inspectorate's Procedural Guide⁵ make clear that an appellant should provide full disclosure of the details of their case and the arguments being put forward at the time they make their appeal.
11. Despite raising the need for affordable housing information at the Case Management Conference, required details were not received by the authority until the Inquiry approached. A similar timescale applies to relevant information associated with the revised layout plan and related highways

² That informal advice was not subsequently endorsed at the Inquiry by the Council

³ See also Guidance paragraph 053 Reference ID: 16-053-20140306

⁴ Framework paragraph 12

⁵ See Annex J of the Inspectorate's Procedural Guide Planning Appeals - England March 2021, paras J.2.2 and J.2.3, and also Guidance paragraph 052 Reference ID: 16-052-20140306

matters. Had those been made available at the time the appeal was made, I agree the Council would not have been required to prepare unnecessary evidence.

12. Even so, I regard the emerging details as a positive and genuine attempt by the appellant to address and resolve the Council's objections rather than as part of its case to confront and rebut the authority's stated opposition to the scheme through new information. The Procedural Guide also only refers to indications of on-going discussions or of anticipated discussions to resolve areas of dispute to be included as part of the appellant's full statement of case. Whilst details were progressed relatively late in proceedings, I find the appellant's actions well-intended and, on balance, not unreasonable.

Conclusion

13. I therefore find that unreasonable behaviour on the part of the appellant resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has not been demonstrated. Accordingly, I conclude that awards of costs are not justified in this instance and the applications are refused.

Peter Rose
INSPECTOR