

Costs Decision

Hearing held on 26 February 2020, 24 & 25 February 2021

Site visit made on 25 February 2021

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2021

Costs application in relation to Appeal Ref: APP/A5270/W/19/3229923 The Dokal Industrial Estate, Hartington Road, Southall UB2 5AD

- 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 the Council of the London Borough of Ealing for an award of costs against Mr G Dokal, Dokal Industrial Estate.
 - The hearing 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 the demolition of existing structures on the site and construction of a sustainable residential development comprising a total of 36no. two, three and four person flats together with associated parking and landscaping.
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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. The examples it gives of unreasonable behaviour include providing information that is shown to be manifestly inaccurate or untrue, and introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen.
 3. The Council claims wasted expense because it had to rerun its viability assessments after the appellant's late notification of an error in the gross internal areas in his data. It claims that had the appellant notified it of the error when it came to light, it would have avoided having to re-run its assessments.
 4. The Council was helpful in raising a query with the appellant as to the accuracy of the area data. The initial response from the appellant did not clearly identify where the errors lay or where corrections would be made. Nor did it include an amended accommodation schedule. Notwithstanding this, the Council had been alerted to the inaccuracy of the data, however limited the appellant's initial response to its query. In those circumstances, the Council should have known that any modelling based on the inaccurate data was at risk of change. The appellant also offered the Council an opportunity to review the finalised areas before it needed to run its calculations, to keep to the appeal timetable.
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5. I understand the frustration of the Council from the invidious position into which it was placed, and the effort in having to re-run its calculations to correct an error which was not of its making. However, the error in the data resulted from oversight rather than concealment. The corrected data did not amount to substantial evidence for the Council to process, and the appellant made reasonable efforts to alert the Council to his error, and in good time. His behaviour cannot therefore be described as unreasonable.

Conclusion

6. I conclude that on the basis of the evidence accompanying the claim, and for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Patrick Whelan

INSPECTOR