The Planning Inspectorate

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
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 Mr G Dokal, Dokal Industrial Estate for a full award of costs against the Council of the London Borough of Ealing.
- 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.

Decision

1. The application for an award of costs is allowed in the terms set out below.

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. It gives examples of unreasonable behaviour including introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen, as well as delay in providing information or other failure to adhere to deadlines.

3. The gist of the appellant's application for costs is twofold. First, he claims that the Council's failure to provide an appraisal of the scheme's viability to provide affordable housing as a commuted sum rather than as affordable housing on-site, resulted in the adjournment of the Hearing. This meant that the time and expense in preparing and attending the first day, on 26 February 2020, was unnecessary and wasted. Second, after the adjournment, the Council's delays in providing information and event notifications, and its introduction of new evidence led to further delay and expense.

4. When the Hearing opened, the Council's position was that there was no agreement between the parties on the amount of affordable housing provision, or an alternative, acceptable commuted sum payment. Indeed, the appellant's viability assessment contended that the scheme would be unviable with any affordable housing, whereas the Council, backed by its viability assessment, considered that 10 of the flats should be for affordable housing, on-site.

5. It was clear from the appellant's appeal submissions, and from his unilateral undertaking, that he was willing to pay a commuted sum towards affordable housing, should that be identified in the appeal decision. The Council raised no objection to the principle of a commuted sum payment. Indeed, while the statement of common ground identified the matter of affordable housing as being excluded from the aspects not in contention, this was on the basis of the development contribution rather than the principle of a commuted sum.

6. However, despite the appellant's unilateral undertaking and the statement of common ground, the Council had not prepared a viability assessment on the basis of a commuted sum. Therefore, at the opening of the Hearing, and notwithstanding the planning policy position, the Council was unable to sustain its position fully in relation to the affordable housing issue. This was unreasonable behaviour because it led to the Hearing being adjourned to allow the Council to respond fully to the appellant's case. While I encouraged both parties to try to narrow the issues between them during the adjournment, this was in order to use the time of adjournment effectively; it was not the reason which prompted the adjournment. Accordingly, I find that the Council's behaviour was unreasonable and led to the adjournment of the first day of the Hearing, resulting in wasted time and expense for the appellant in preparing for and attending the first day.

7. I appreciate that the Council introduced new evidence and altered its Existing Use Value. However, this was not unreasonable given it was undertaking an assessment a considerable period of time after it had gathered data for its first assessment. The error in the calculation of the gross internal floor areas of the proposal, which needed correction, was not the Council's fault. If its adjustment to its assessments as a result of correcting the appellant's error was untimely, this was not unreasonable behaviour in the circumstances. Similarly, while the date for the resumed Hearing was put back because of the Council's short notice in notification, it has not been demonstrated that this led to unnecessary or wasted preparation expense, especially given that the Hearing resumed promptly.

8. I conclude that on the basis of the evidence accompanying the claim, and for the reasons set out above, unreasonable behaviour, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in relation to the adjournment of the first day of the Hearing.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Ealing shall pay to Mr G Dokal, Dokal Industrial Estate, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the first day of the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to the Council of the London Borough of Ealing, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Patrick Whelan

INSPECTOR