



Costs Decision

Hearing held on 16 to 18 February 2021

Site visit made on 21 June 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2021

Costs application in relation to Appeal Ref: APP/A5840/W/19/3233375 303 Camberwell New Road, London SE5 0TF

- 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 Southwark for a full award of costs against Mr Ucur, TFC Camberwell.
 - The hearing was in connection with an appeal against the refusal of planning permission for a development that was originally described as the demolition of all buildings on site and redevelopment of the site to provide a mixed-use development, comprising retail and 27 dwellings with ancillary refuse storage, cycle storage and landscaping.
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Decision

1. The application for an award of costs is refused.

Procedural Matter

2. The Council (the applicant) announced on the first day of the hearing of its intention to submit a costs claim. I requested that the costs claim be made available in writing, and the applicant duly obliged. The appellant was given the opportunity to respond and did so in writing. Both parties were also given the opportunity to add to their responses orally and then the applicant was given the opportunity to provide final comments. Both parties relied on their written submissions. The applicant confirmed that a full award of costs was sought.

Reasons

3. The Planning Practice Guidance (PPG) 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.
4. The claim is made on substantive grounds. Where procedural grounds have been raised, the applicant confirmed this was in order to support the substantive case. Accordingly, I have considered the claim on this basis.
5. The claim considers that the appellant has acted unreasonably in the context of not offering any affordable housing provision and points to the position of the development plan and national policy.

6. The starting position of the development plan policy is a minimum level of provision of affordable housing. The Council's Core Strategy (2011) refers to a minimum of 35% provision on sites that provide 10 or more housing units. The National Planning Policy Framework expects at least 10% of the homes to be available for affordable home ownership as part of the overall affordable housing contribution from the site. Supplementary planning guidance and London Plan documents also refer to the related targets.
7. Both the development plan and national policy do, though, permit a consideration of viability, even if they are predicated on the full provision of affordable housing being made. There could be situations, although not in this case, where this would lead to a justified nil affordable housing provision. It is for the appellant to demonstrate whether the particular circumstances justify the need to consider viability and it has sought to do so in this case. As such, this is not a position which runs flagrantly counter to the position of the development plan and national policy.
8. Whether such viability evidence is compelling is a separate matter. The applicant considers that it follows that the merits of this costs claim will be inextricably tied up with my evaluation of the merits of the appellant's position on viability. However, such a position conflates the roles of the appeal and costs decisions. For similar reasons, whether or not the appellant's position is a by-product of maximising the value of the site is of limited relevance to the consideration of the claim.
9. What is of more importance is whether the appellant has provided adequate supporting information to support its case. As well as the original appeal submissions, a not insignificant level of evidence in relation to viability was submitted during the appeal. The appellant also agreed a table of inputs on viability which showed where there was agreement or disagreement. Detailed verbal evidence was also provided at the hearing. Overall, the appellant's evidence amplifies its case to a satisfactory degree and adequately explains the appellant's position, even if I do not ultimately agree with it for the reasons that I have set out in my appeal decision.
10. The applicant also considers that the appellant's position of nil affordable housing results in a situation where it cannot be resolved through discussion and negotiation. This simply seems to result from the findings of the appellant's own viability evidence which the appellant considers means no affordable housing could be provided. It is, though, a position that relies on evidence and whilst clearly the applicant has had to instruct a viability expert, this is a consequence of the nature of this matter of dispute.
11. The applicant has also referred to the amount of new evidence on viability submitted during the appeal by the appellant and what the applicant sees as unexplained new positions. It is fair to say that I did express concerns during the appeal about the submission of unsolicited evidence outside of the usual timetable. However, to a degree, this concerned both main parties and so it would be unfair to penalise one party over the other. In any event, it was my decision to accept this evidence. For the reasons that I have already explained above, the appellant's position is not one without sufficient explanation.
12. I have also considered whether a partial award is justified. The applicant's grounds for costs solely relate to affordable housing and so as I find a full award would not be justified, nor would a partial award.

Conclusion

13. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is not, therefore, justified.

Darren Hendley

INSPECTOR