



## Costs Decision

Inquiry held on 20 and 21 April 2021

Site visits made on 8 April and on 26 April 2021

**by Peter Rose BA MRTPI DMS MCSI**

an Inspector appointed by the Secretary of State

**Decision date: 16 August 2021**

---

### **Costs application in relation to Appeal Ref: APP/A5270/W/20/3264195 92-100 Warwick Road, Ealing W5 5PT**

- 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 the Council of the London Borough of Ealing for a partial award of costs against Walker Warwick Limited.
  - The Inquiry was in connection with an appeal against a failure to give notice within the prescribed period of a decision on an application for planning permission. The development proposed is 'demolition of existing buildings and redevelopment to provide a mixed-use development extending to 5 storeys in part comprising 20 residential apartments and 5 mews houses (Class C3); 95 sqm of commercial floorspace (flexible Class A1, A2, D1 or B1 use), together with associated landscaping, cycle and refuse storage, parking and new access arrangements from Warwick Road'.
- 

### **Decision**

1. The application is refused.

### **The submissions for the Council**

2. The Council understood that the appellant's unilateral undertaking would adopt the components/terms set out within the agreed Statement of Common Ground. Instead, the appellant's completed undertaking was not in accordance with those arrangements and evidence considered at the Inquiry. It instead required the Council to respond to new terms and matters not raised at the event.

### **The response by Walker Warwick Limited**

3. It is incorrect that the completed undertaking has broadly departed from previous discussions. Solicitors to both main parties were in possession of a draft of the undertaking prior to the Inquiry and were aware of the outstanding areas in discussion to follow.
4. The changes made to the draft undertaking following the Inquiry simply sought to correct drafting errors from this version, to resolve well-acknowledged weaknesses with the Greater London Authority formulae, and to ensure the late-stage review mechanism was consistent with the agreed target profit value of 20% of gross development value.
5. Nothing introduced was seeking to materially change any impact upon affordable housing, or to undermine the agreed areas of common ground.

## Reasons

6. The Planning Practice Guidance (the Guidance) identifies various examples of unreasonable behaviour by an appellant, and these include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.<sup>1</sup>
7. Review mechanisms were presented to the Inquiry and these were identified as signed and agreed within the 'Compromised Area of Common Ground Affordable Housing Financial Viability' (Table 3.0).<sup>2</sup>
8. Nevertheless, accompanying correspondence from the appellant to the Council indicates that the detailed wording of the heads of terms was still to be the subject of continuing discussions between the parties.
9. The evidence also shows that, on the first day of the Inquiry, a further draft of the undertaking was submitted to both the Council's advocate and its planning case officer and inclusive of amended definitions and wording. Further, references made by the Council's advocate in discussion of the draft terms on the second day of the Inquiry do appear to have been consistent with those then latest terms. These included passing references to definitions of the target return, to substantial implementation, and to the substantial implementation target date.
10. Aside from the particular details in dispute, the form and content of the final undertaking were otherwise generally consistent with the terms listed in Table 3.0. Even so, the principle of some detailed changes to the final version was not unannounced, I have assessed those changes to be reasonable, and they were intended to be reflective of an on-going dialogue previously identified by the appellant.

## Conclusion

11. 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 an award of costs is not justified in this instance and the application is refused.

*Peter Rose*  
INSPECTOR

---

<sup>1</sup> Paragraph: 052 Reference ID: 16-052-20140306

<sup>2</sup> See Statement of Common Ground signed and dated 16 April 2021