
Costs Decision

Inquiry opened on 13 July 2021

Site visit made on 21 July 2021

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 November 2021

Costs application in relation to Appeal Ref: APP/A5270/W/21/3268157 51-56 Manor Road and 53-55 Drayton Green Road, West Ealing, London W13 0LJ

- 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 Southern Grove West Ealing Ltd and Metropolitan Thames Valley Housing for a full award of costs against the Council of the London Borough of Ealing.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the construction of a building with a basement level, part double-height ground floor with part mezzanine floor and 18 and 12 floors above with roof plant and communal roof garden to accommodate two flexible-use units at ground floor (A1/A2/A3/D1 or D2 Use Classes) and 144 residential units (100% affordable) on the upper floors (mezzanine to 18th floor) with associated cycle and bin stores, substation, private and communal amenity space and alterations to the highway (following demolition of existing buildings on the site).
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Decision

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

The Submissions for the Appellant

2. These were submitted in writing¹ during the Inquiry.

The Response by the Council

3. This was submitted in writing² after the Inquiry closed in accordance with an agreed timetable.

Final Comments by the Appellant

4. These were submitted in writing³ after the Inquiry closed in accordance with the agreed timetable.

Reasons

5. Planning Practice Guidance⁴ tells us that in general, parties in planning appeals and other planning proceedings normally meet their own expenses. All parties

¹ ID28

² ID34

³ ID35

⁴ Referred to hereafter as PPG

are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. The aim of the costs regime, amongst other things, is to: encourage all those involved in the appeal process to behave in a reasonable way and follow good practice; and to encourage local planning authorities to properly exercise their development management responsibilities; and discourage unnecessary appeals.

6. PPG gives a series of examples of where an award of costs may be given against a local planning authority, but it is made explicit that the lists are not exhaustive. The PPG does say that local planning authorities are at risk of an award of costs with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning permission, or by unreasonably defending appeals.
7. Here the point made on behalf of the appellants is that the decision to refuse planning permission for the proposal (contrary to the advice of Officers) was made without considering matters that might have been very important influences on the decision-making process. In short, the Council failed to take into account that when it took the decision, it could not demonstrate a five-year supply of deliverable housing sites. Moreover, the Council failed to take account of Government advice in the National Planning Policy Framework⁵ on how it should approach decision-making in that context. Put simply, the Council failed to apply the so-called 'tilted balance' in reaching its decision.
8. The monitoring of housing supply is such a fundamental and important part of the development management process that it is not something that can simply be set to one side when decisions on housing applications are made. The failure to address this matter means that a very important aspect of Government policy in the Framework was effectively ignored. It could be said that had Members applied the 'tilted balance' to the matter before them they would have reached the same decision. However, the important point is that we simply do not know. Had Members done so, they could very well have reached the opposite conclusion. This failure to engage with the 'tilted balance' was a significant failing, and palpably unreasonable.
9. Further, the Council's evidence to the Inquiry did not address this fundamental matter. When the omission was brought to light, at the point when evidence was exchanged, the Council did not review its case as the PPG suggests it should but continued to defend their stance without reference to it. Again, that is unreasonable.
10. The best conclusion for the Council that I can draw from all that is that the Inquiry was unnecessarily prolonged because of the Council's unreasonable failure to review its case. However, it seems to me far more likely that the appellant has been put to the time and trouble of an unnecessary appeal, because the decision to refuse planning permission was made on an unreasonable basis in the first place.
11. As such, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a full award of costs is justified.

⁵ Referred to hereafter as the Framework

Costs Order

12. 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 Southern Grove West Ealing Ltd and Metropolitan Thames Valley Housing, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. 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.

Paul Griffiths

INSPECTOR