

Costs Decision

Inquiry Held on 8-11 and 22-25 March 2022

Site visit made on 21 March 2022

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th May 2022

Costs application in relation to Appeal Ref: APP/E5330/W/21/3285177 Land at Nos 6, 61-81 and Coopers Yard, Eastmoor Street and Nos. 6 & 10 Westmoor Street, Charlton, London SE7 8LX

- 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 Eastmoor Street 81 LLP c/o Aitch Group for a full award of costs against Royal Borough of Greenwich Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for demolition of existing structures and erection of buildings of 6-10 storeys (including mezzanine level areas plus roof access level areas with a maximum total height of 39m AOD), comprising 202 residential units, 1291 sqm B1/B8 flexible employment floorspace and 510 sqm flexible retail and community uses (Use Classes A1 – A5 and D1) with associated landscaping and new public realm, access and infrastructure works, refuse and recycling storage, car parking and cycle parking and associated development.
-

Decision

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

Procedural matters

2. The inquiry was held jointly with an appeal¹ by Optivo at the adjacent site for erection of a building of up to seven storeys in height for 67 residential units and business use. The appeal and costs application by Optivo are the subject of separate decisions.
3. The case and replies for this costs application were submitted in writing and therefore there is no need to repeat them here in full.

Reasons

4. The Planning Practice Guidance (PPG) advises that parties in planning appeal proceedings normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Behaviour may be either procedural or substantive.
5. The aim of the costs regime is to encourage those involved in the process to behave in a reasonable way, to encourage local planning authorities to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and to not add to development costs through avoidable delay.

¹ Appeal decision APP/E5330/W/21/3288655 Evelyn House, Eastmoor Street, Charlton.

6. The applicant submits that, whilst not neatly falling into one of the examples of unreasonableness set out in the PPG, the Council has demonstrated the following unreasonable behaviour:
 - the Planning Board's decision to refuse permission in the face of a very clear and well considered officer report;
 - the Council's evidence has been wholly unconvincing and vague; and
 - the Council not documenting its reconsideration of the merits of the case in light of changing circumstances.
7. It can be seen from my appeal decision that I disagree with the Council on the sole ground for refusing the application, namely the effect of the proposal on the character and appearance of the surrounding area. I found harm to the character and appearance of the area which, whilst only limited, was outweighed by the benefits of the proposal. This is a matter of planning judgement. Similarly, the Council reached its own planning judgement, namely, that the harm of the proposal was not outweighed by the benefits. In this respect, the Council was not unreasonable in reaching the conclusion it did, so long as it could substantiate its reasoning.
8. In doing so, the Council's evidence placed considerable emphasis on the departure of the proposal from particular block diagrams in the SPD, in terms of height and massing. That case was rather simplistic, as well as overly reliant on the finer detail of what was, after all, acknowledged by the Council as being a guidance document only. Although I have found that the Council's case on the harmful impacts caused by the proposal was considerably overstated, the Council nonetheless maintained a cogent and clear justification for its position. Such differences in opinion on design matters and indeed on the process of design are not unusual in general terms. In this case, there is a straightforward difference in professional views. Even though the officer report had recommended otherwise, it was nonetheless a reasonable planning judgement for the Council to make.
9. The applicant identifies two key changes in circumstances following the Planning Board's decision to refuse, firstly, the publication of the Greater London Authority (GLA) Stage 2 Report and, secondly, the reduction in five year housing land supply. The GLA report raised no substantive concerns regarding height or massing of the proposal and considered that the development optimised the site's capacity in line with the design-led approach. However, this report was broadly aligned with its earlier report and, in any case, the Council was equally entitled to its own view. That is also the case even in the face of the reduced housing land supply position. Both of these issues are, after all, matters to be weighed in the planning balance.
10. Furthermore, the Council had acknowledged the changed housing supply position in this respect from the outset of the appeal. Indeed, its Statement of Case concludes by undertaking the so-called tilted balance with regard to the agreed housing supply of 3.15 years. Whether or not the Planning Board should have reconsidered the changed position, the Council's evidence has taken these matters into account, and in this regard I have assessed both the appeal and the costs application on the basis of the Council's case as presented to me.
11. That the Council's design witness accepted the commission to defend the appeal before visiting the site was reasonably explained by Mr Reynolds; he

was already familiar with the locality and had been provided with sufficient documentation on the proposal.

12. Overall, even though I found the counterweighing benefits of the appeal scheme to be decisive, the Council was equally entitled to make its own judgement on the balance of harms to benefits, even in light of the presumption in favour of sustainable development. I conclude that whilst the Council did refuse permission in the face of a very clear officer recommendation, it was not unreasonable in doing so, nor did it provide evidence that was wholly unconvincing and vague. Whilst the Council's objective analysis of the proposal was weak, it was not unreasonable. Finally, the Council's evidence provided reasonable reconsideration of the merits of the case in light of changing circumstances.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Patrick Hanna

INSPECTOR