



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/21/3288655 Evelyn House, 5-31 Eastmoor 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 Optivo 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 building and construction of a part 4/part 6/part 7 storey building comprising Class C3 residential use (67 units) and Class B1 business use, with associated amenity and play space, public realm, access, car and cycle parking, refuse and recycling storage and sub-station.
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Decision

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

Procedural matters

2. The inquiry was held jointly with an appeal¹ by Aitch Group (AG) for development at the adjacent site for erection of buildings between six and nine storeys in height for 188 residential units and flexible employment, community and retail floorspace. The appeal and costs application by AG 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.
6. The applicant submits that the Council has demonstrated the following unreasonable behaviour, with reference to paragraph 49 of the PPG:

¹ Appeal decision APP/E5330/W/21/3285177 Coopers Yard, Eastmoor Street and Westmoor Street, Charlton.

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - acting contrary to, or not following, well-established case law; and
 - not determining cases in a consistent manner.
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 gave significant weight to the SPD, taking its starting point from the VIP appeal decision where the Secretary of State and Inspector also accorded that document significant weight. The applicant cited a number of factors that were said to detract from that weight. However, it will be seen for the reasons given in my appeal decision that I did not consider the SPD to be so out of date that its relevance as a material consideration should be significantly lessened. Consequently, I concluded that the SPD should still be given significant weight for the purpose of these appeals. It follows that I do not find the Council to be unreasonable for reaching the same conclusion.
9. The Council's evidence also placed considerable emphasis on the departure of the proposal from particular block diagrams in the SPD, in terms of height and density. 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.
10. In justifying its case on the harmful impacts caused by the proposal, the Council disputes the applicant's claim that Mr Reynolds accepted under cross examination that there were no adverse impacts on land use considerations. Whether he did or not, Mr Reynolds did on a number of occasions clearly re-iterate his view that negative impacts derived from the height and density of the proposal.
11. The applicant further argues that harmful impacts are not actually stated within the Council's reason for refusal. In my view, the wording does cite actual harms, albeit that it is perhaps not as tightly worded as it could be.

Furthermore, the main issue in my appeal decision seeks to test harmful impacts, as agreed by the parties at the case management conference.

12. Although the reason for refusal makes no direct reference to the design-led approach, it does cite policy D3 of the London Plan (2001) which, in its title and policy wording, requires development to optimise site capacity through the design-led approach. As a consequence, it is not unreasonable to present a case that height and density are too high as a result, at least in part, of the failure to undertake the design-led approach.
13. The Optivo scheme is less dense than the AG scheme in numerical terms² but the AG scheme was not refused on those grounds. On its face, this could be considered as inconsistent, however the Council replies with reference to the symptoms of over-dense development. Indeed, there is a shortfall in play space provided by the Optivo scheme in comparison to the full on-site provision of the AG scheme. Even though it will be seen from my appeal decision that I am not persuaded that this argument demonstrates an unacceptable level of over-dense development, it does provide a reasonable explanation for the perceived inconsistency.
14. As one of the first development proposals within the Charlton Riverside Opportunity Area, the proposed building would influence the context for future development within it. The applicant refers to *Poundstretcher*³; that the mere fear of precedent is not enough, rather there has to be some evidence that if planning permission were granted it would prejudice the ability to resist similar development elsewhere. However, *Rumsey*⁴ recognises that harm by precedent can be made in circumstances where the facts speak for themselves. In other words, this again is a matter of planning judgement.
15. 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 the Council did not delay development which should clearly be permitted, fail to substantiate reasons for refusal, or make vague assertions about impacts. Whilst the Council's objective analysis of the proposal was weak, it was not unreasonable. I also find that the Council did not fail to determine similar cases in a consistent manner, nor did it act contrary to established case law.

Conclusion

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

Patrick Hanna

INSPECTOR

² Optivo scheme 281.5 dwellings per hectare vs Aitch Group scheme 318 dwellings per hectare

³ *Poundstretcher Ltd v SSE* [1988] 3 PLR 69

⁴ *Rumsey v SSETR* (2001) 81 P&CR 32