
Costs Decision

Hearing Held on 17 May 2022

Site visit made on 17 May 2022

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Costs application in relation to Appeal Ref: APP/B5480/W/21/3287285 Tesco Extra Bryant Avenue, Romford, RM3 0LL

- 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 Weston Homes PLC for a partial and substantial award of costs against the Council of the London Borough of Havering.
 - The hearing was in connection with an appeal against the refusal of on an application for planning permission for is phased redevelopment of the site including: relocation of existing hand car wash facility, Click+ Collect Unit and recycling centre; the erection of 87 dwellings and associated development including new vehicular access car and cycle parking, hard and soft landscaping and other associated works, and hard and soft landscaping improvements to the public realm and retained section of the Tesco store car park.
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Decision

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

The submissions for Weston Homes PLC

2. The application has been made on both procedural grounds (partial application) and substantive grounds (partial and substantial application).
3. In summary, these grounds cover the following points:

Procedural

- The failure of the Council to review additional information which it had requested
- Withholding consultation responses
- Refusal to enter into a S106 Agreement (S106A) and Statement of Common Ground (SoCG), and
- Failure to engage with the appeal process.

Substantive

- The proposed scheme was in accordance with the Development Plan as a whole and should have been granted planning permission and is supported by national policy. This is particularly important given the Council's housing land supply position and housing delivery.
- The reasons for refusal were not supported by the Council in evidence

4. Furthermore, the Council have behaved unreasonably resulting in the applicant incurring unnecessary expense.

The response by LB Havering

5. In summary the Council's response is as follows:

Procedural

- The Council did not request the additional documentation referred to and all consultation responses were provided by the Council apart from the neighbour representations, and
- The Council does not normally enter into S106A for schemes of the size of the appeal scheme and the late completion of the SoCG was caused by differences in what could be agreed as common ground.

Substantive

- The Council has fully engaged in the appeal process, drawing on evidence included in both the officer's report to Committee and its statement of case. It set out a clearly argued case against the appeal scheme.

Reasons

6. Planning Practice Guidance (the Guidance) advises that costs may only 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 process. I shall aim to address each strand of the applicant's case in turn.

Procedural Issues

7. The applicant highlights several areas where the Council's behaviour did not follow the Guidance.
8. These include its failure to send on the comments of consultees. Although this latter point is disputed by the Council this is a matter which should be routine. This is irrespective of the resource issues which the Council states, were in part the justification for the delays.
9. However, despite these shortcomings it is unclear where the applicant has incurred unnecessary expense. For example, despite the withholding of comments from TfL¹ and the Highway Authority, the only example of additional expense cited by the applicant relates to the survey and modelling of a nearby junction for its Statement of Case. Although a reference is made in summary to this matter in the officer's report (OR), this is not an issue which the report highlighted as of major concern and junction capacity was not identified as an issue in the Council's third reason for refusal. The applicant acknowledges the survey was undertaken as 'a precautionary measure'. This work was not necessary to its case.
10. In respect of the Council's requests for additional information at the validation stage it is my understanding that these documents were required to reflect the policies of the recently adopted Development Plan and requests from TfL. Clearly, validation requirements should have been updated. In the case of the Health Impact Assessment this was required by policy LP12.

¹ Transport for London

11. In respect of the Council's failure to provide comment on this additional documentation, despite an extension of time granted by the applicant, it is unclear how unnecessary expenditure was incurred. I accept having to wait for many weeks for comments, only to be informed that the Council had none, may have been frustrating for the applicant. However, it may have been that several weeks were required to come to this conclusion. I have no evidence that the Council refused to review them as the applicant states.
12. The Stage 1 Safety Audit was required and is a matter which I have considered as part of the 'Highways' issues in the main decision.
13. With regard to the completion of the SoCG, I acknowledge that completion in advance of the Hearing allows all parties and the Inspector to understand the areas of disagreement in order to distil the arguments and marshal the presentation of evidence. This is supported by the Guidance.
14. Although there are presentational flaws in the OR, it is clear in its presentation of the arguments in support of the Council's four reasons for refusal. I do not accept that the applicant would have 'been left guessing' at the substance of the Council's case.
15. With respect to the failure of the Council to enter a S106A, this is a matter for the Council's discretion. It has indicated in its response that it normally would not enter into an Agreement for schemes of the size of the appeal scheme. The alternative of a Unilateral Undertaking, was subsequently followed by the applicant. This is not uncommon at the appeal stage.
16. Finally, the Council's evidence rested on the officer's report and its statement. The fact that its statement was directed at an issue which was not included in the Applicants revised Statement of Case in respect of the release of Green Belt land following adoption of the new Local Plan, reflects the changing policy context. I acknowledge that the Council did not adhere to the Procedural Guidance² in this respect. However, it is unclear how this omission could have prejudiced the applicant's case and led to unnecessary costs.

Substantive

17. The Council's first reason for refusal was based on the proposed development's design informed to a degree by the comments of the QRP³. The Council does not have an objection in principle to residential use in this location and accepts that the design of the appeal scheme has merit but is in the wrong location.
18. The OR addresses the Council's view on the scheme's design and the Council has demonstrated the extent to which the scheme would result in harm to the character and appearance of the area through the oral presentation by officers. The OR addresses this point (page 12/25). A more detailed statement could have been used to amplify these points but the Council's reasoning included in the OR is clear.
19. My understanding is that the scheme was amended by the applicant to reflect comments of the QRP as set out in the DAS⁴ despite the Council's statement to

² Procedural Guide – Planning Appeals, England 2019

³ Quality Review Panel

⁴ Design and Access Statement

- the contrary included in the OR. Reference to Policy D1 in the first reason for refusal was a mistake as this is not relevant to the design issue.
20. These are errors by the Council and demonstrate failures in the reporting of this decision. However, it is unclear how these matters would have led to unnecessary expense being incurred by the applicant.
21. In respect of the Council's second reason for refusal, this was informed by Policy LP7. The Council applied this policy given that the existing development i.e. the car park lies in such close proximity to the appeal site with only limited landscaping separating the site from the retained car park. The Council makes reference to Policy D6. This is applied appropriately to the issue of living conditions.
22. I do accept, however, that the references to the lack of communal space fail to fully address the excess space within the scheme and those other areas of local public open space near to the site. The Council's analysis could have been more complete in this regard.
23. In respect of the issues related to Highway Safety many of these were resolved through the revised drawings submitted with the appeal and could have been the subject of a planning condition. The issue of parking standards, given the conflict between those adopted by the Council and the Mayor was not fully articulated nor was the issue of surveys fully addressed in the OR. However, the report was detailed in its analysis.
24. In respect of the Council's fourth reason my response is included in the previous section above.
25. The OR lacks a 'planning balance' leading to a clear conclusion; this could have been used to explore the implications of other matters such as the extant permission and accurately described the implications of the tilted balance. However, the substance of the report, in addressing the issues on which the reasons for refusal were based, is clear.
26. The report lacks headings and paragraph numbers and there are other matters to which I have referred to above and in the preceding sections which do not reflect the professional standards required for reporting of an application of this complexity. However, these matters are not grounds for a successful claim.

Conclusions

27. The Council has not demonstrated the standards which applicants would normally expect in the management and reporting of the application and the appeal. These failings amount to unreasonable behaviour.
28. However, I do not consider that either individually or in combination they amount to a level of unreasonable behaviour which have led to unnecessary costs which could justify a successful claim on procedural and or substantive grounds.

Stephen Wilkinson

INSPECTOR