

Costs Decision

Site visit made on 28 June 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Costs application in relation to Appeal Ref: APP/L5810/W/21/3283294 Mega House, 159a High Street, Hampton Hill TW12 1NL

- 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 the Council of the London Borough of Richmond-upon-Thames for a partial award of costs against Wicklow Homes.
 - The appeal was against the refusal of planning permission for alterations and extensions to roof and change of use from offices to three residential apartments.
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Decision

1. The application for a partial award of costs is allowed.

Reasons

2. The Planning Practice Guidance (the PPG) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council considers that Wicklow Homes acted unreasonably in the submission of additional information after both parties had submitted their statements of case. Due to the technical nature of the additional information, namely a Financial Viability Analysis (FVA), the Council, then had to cover the cost of commissioning a review by an external consultant. As well as this, additional officer time has been spent reviewing this matter as part of the appeal.
4. The additional information relates to affordable housing and even though the Council no longer objects on that ground, and notwithstanding my decision to accept that information, it is still necessary for me to assess whether unreasonable behaviour has taken place.
5. Policy LP36 of the Richmond Upon Thames Local Plan (2018) (Local Plan), requires, in cases below 10 units, a financial contribution commensurate with the scale of the development. The policy requires the Council to have regard to any viability evidence presented by the developer, who will then be required to underwrite the costs of a Council commissioned viability assessment.
6. Wicklow Homes would have been aware of the requirements of Policy LP36 having dealt with the issue in previous applications at the site, whilst also being set out in the Council's officer report. Therefore, the matter of scheme viability should have been challenged by Wicklow Homes during the planning

application stage. Had the Council received a FVA at that stage, it could then have assessed the evidence through its own advisers. That service would have incurred a charge from the Council in accordance with Policy LP36. In this case, the developer proceeded with submitting the appeal without any substantive evidence to refute the Council's reason for refusal in relation to affordable housing and the resultant development plan conflict. It was only during the appeal that this information was submitted.

7. Affordable housing calculations were submitted by Wicklow Homes with the planning application. However, there was no FVA submitted justifying that a financial contribution was unviable.
8. The developer indicates that it was aware of the concerns relating to affordable housing but deemed that the issue would be addressed by a condition if the concerns regarding the loss of office space were overcome. However, I have no details of the form of wording such a condition would take.
9. Wicklow Homes also refers to a failure by the Council to make clear the extent of the financial contribution required. Attempts were also made to contact the case officer by email/telephone. Even if that was the case, the Council's assessment of the FVA at the appeal stage has incurred an unnecessary cost which, under the terms of the development plan, must be paid for by the developer. Failure to do this has resulted in the Council having to meet the cost of that exercise.
10. I therefore find that unreasonable behaviour by Wicklow Homes, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. The Council is now invited to submit to Wicklow Homes, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, they should apply for a detailed assessment by the Senior Courts Costs Office.
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 other enabling powers in that behalf, IT IS HEREBY ORDERED that Wicklow Homes shall pay to Council of the London Borough of Richmond-upon-Thames, the costs of the appeal proceedings described in the heading of this decision.

RE Jones

INSPECTOR