



Costs Decision

Inquiry Held between 20 June and 3 July 2023

Site visit made on 23 June 2023

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2023

Costs application in relation to Appeal Ref: APP/G5180/W/23/3315293 Former Sports Ground, Worsley Bridge Road, Beckenham BR3 1RL

- 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 Caerus Developments for a partial or full award of costs against the Council of the London Borough of Bromley.
 - The inquiry was in connection with an appeal against the refusal of planning permission for demolition of all existing buildings on site and redevelopment to provide residential development comprising a mix of dwellinghouses and apartment blocks (part 3 and part 5 storeys in height), including provision of affordable housing, alongside the provision of public open space fronting Worsley Bridge Road, onsite play space and areas for public sports facilities, associated landscaping, car parking and ancillary works.
-

Decision

1. The application is refused.

The submissions for Caerus Developments

2. The application is made on both procedural and substantive grounds.
3. The Council's case hinged on loss of playing fields. Its case relied on the Playing Pitch Supply and Demand Report (PPSDR) which the Council accepts is flawed because a number of Council-owned lapsed playing pitch sites have not been included in the assessment. No explanation was given as to why those sites were omitted from the study and no investigation of the reasons for this was carried out by the Council. The authors of the report were not called to give evidence at the Inquiry. A witness from Sport England was called who could not help the Inquiry with solutions for replacement sites.
4. The omitted sites appear on the Active Places Power database and were noticed by the applicant. They should have been known to the Council.
5. The report was not made available to the applicant despite being finalised over a year ago and despite repeated requests by the applicant, including Freedom of Information requests.
6. The sites which have been excluded from the Council's assessment would go a long way to resolving the shortfall in football pitches. The PPSDR does not make any recommendation.
7. The Council took no account of the offered off-site playing fields contribution. The Council claims that this contribution would not be compliant with the

Community Infrastructure Levy (CIL) Regulations but has offered no explanation for this. The Local Football Facility Plan and the PPSDR identify sites where this contribution could be spent.

8. The Council also claim that the tennis and padel courts would not be CIL compliant but have offered no explanation. The Council has ignored the benefits of the proposal and has prevented or delayed development which should clearly be permitted.
9. The Council has failed to produce evidence to substantiate the playing field part of its case and has offered vague, generalised or inaccurate assertions about the impact of the development. If the PPSDR had been provided at an earlier stage, this could have resulted in the appeal being avoided. The Council also failed to review its case upon receipt of the applicant's evidence on playing fields. It contested the evidence presented by the applicant on the omitted sites but then abandoned its case on this point.
10. The Council also refused to meet with the applicant during the determination period for the planning application regarding the proposed additional affordable housing provision. There was a lack of collaboration on this matter and the full benefit was not taken into account by the Council.
11. The Council's case on architecture and its denial of the scale of housing land supply and affordable housing problems are all ill-founded.

The response by the Council of the London Borough of Bromley

12. The Council has not behaved unreasonably, either procedurally or substantively, or at all.
13. The Council's case did not hinge on the playing fields issue. This was an important issue but so were the other main issues in terms of harm to Metropolitan Open Land (MOL) and design and townscape objections, balanced against the benefits of housing and affordable housing.
14. No part of the Council's case was advanced unreasonably. Taking a different view on the merits is not unreasonable.
15. The Council has accepted that the PPSDR is flawed because it misses some sites. Acceptance of this is the opposite of unreasonable. The PPSDR is an interim document and has not been progressed to the stage of making recommendations. The applicant's witness recognised this. The report was released in order to inform the evidence that was produced for the Inquiry.
16. The explanation for the omission of sites from the PPSDR is human error. This is unfortunate but not deliberate or sinister and is not unreasonable.
17. The applicant did not advance a case that the site is surplus to requirements. Nor can it be argued that the omitted sites make a telling difference to supply. The omitted sites do not alter these considerations in terms of planning policy.
18. It was not unreasonable for the Council not to have called a witness from the authors of the PPSDR or for it to have called a witness from Sport England who was able to assist with the central policy and exceptions at the heart of the loss of playing field issue.

19. There is no policy support for the off-site contribution, and this is the reason why it is not CIL-compliant. The Council did not argue that the tennis and padel provision would not be CIL compliant. The Council's evidence gave weight to this provision and conditions were put forward to secure it.
20. Because the applicant did not argue that the site is surplus to requirements, there was no need for the Council to review its case upon receipt of the applicant's evidence. The omissions from the PPSDR do not amount to vague, generalised or inaccurate assertions.
21. The Council's refusal to meet with the applicant regarding the additional affordable housing provision was not unreasonable.

Reasons

22. The Planning Practice Guidance advises that costs may 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 appeal process.
23. The Council's case was based on a number of main issues which were the subject of its reasons for refusal. These included the effect of the proposal on MOL and its effect on the character and appearance of the area as well as its effect on sports and playing fields.
24. The Council delayed providing its PPSDR to the applicant and the reason for this delay is not clear. However, the report was made available with the Council's statement, and this allowed sufficient time for the applicant to prepare its evidence. The timing of the release of the report did not cause the applicant to incur unnecessary or wasted expense in the appeal. Because sports and open space provision formed only one of the main issues, the earlier provision of the PPSDR would not have obviated the need for the appeal.
25. It was a matter of agreement at the Inquiry that the PPSDR is flawed because it does not take into account a number of Council-owned recreation grounds where former playing pitches have lapsed. The explanation given by the Council for this omission is that it was down to human error. The PPSDR identifies a current and future shortage in football pitch provision in the borough but because the former pitches at the omitted sites are not currently available, they would not have affected this assessment. The applicant did not claim that there is a surplus in football pitch provision.
26. Had the omitted sites been included in the report this may have assisted with giving a greater understanding of the effect of the proposal, but it was clear throughout the appeal that the PPSDR is an interim document which has not yet progressed to the stage of making recommendations. Had the Council involved the report authors in the appeal, or investigated the reason for the omissions, this could have assisted, but the absence of such action does not amount to unreasonable behaviour.
27. The applicant's sports witness drew attention to the omitted sites in his proof of evidence. Following this, the Council's witness from Sport England asked Council officers for information on the omitted sites. Although the relevant e-mail correspondence was made available to the Inquiry at a late stage, after the first sitting week, the merits of the omitted sites were discussed at the Inquiry. The late submission, although inconvenient, did not cause the applicant to incur unnecessary or wasted expense.

28. The Council provided a CIL compliance statement with its statement of case and provided its updated CIL compliance statement at the Inquiry. These documents do not refer to the offered off-site playing fields contribution. This obligation was made unilaterally, and the Council stated at the Inquiry that it considered that this would not comply with the CIL Regulations. The obligation was first put forward after the Council had prepared its statement of case.
29. The off-site playing fields contribution was explored in evidence at the Inquiry and the Council's witnesses were clear that the obligation is not necessary to ensure policy compliance. On this basis it is not CIL compliant. I have found similarly to the Council on this point in my decision on the appeal.
30. The Council did not identify any site on which the contribution could be spent but had limited time in which to do so. This would not have altered the uncertainty that would be inherent in the obligation being made unilaterally, which would not have bound the Council to spend the money on any identified project.
31. I have concluded similarly to the Council in my decision on the appeal with respect to sports and open space provision and the other main issues. The Council's position with regard to the merits of the case was substantiated by evidence and was not unreasonable. There is no reason why the Council's failure to review its case upon receipt of the appeal amounted to unreasonable behaviour.
32. The planning obligation contains a unilateral undertaking to transfer the tennis and padel courts to a tennis operator. The Council did not put forward any case with regard to whether this provision would comply with the CIL Regulations. The Council's closing submissions clarify that the Council did not contend that this provision would not be CIL compliant.
33. During the period of the Council's consideration of the planning application, the applicant requested a meeting to discuss its intention to apply for grant funding for affordable housing. Although the Council declined to meet the applicant on this matter, it had stated that a viability assessment was required under planning policy. I have found in my decision that a viability assessment is required but that this would be outweighed by the proposed level of affordable housing provision.
34. It is clear that the Council had full regard to the benefit that would arise from the affordable housing. I have come to a different view on the merits on this matter, but this does not mean that the Council behaved unreasonably.
35. For the reasons given, I find that unreasonable behaviour, resulting in unnecessary or waste expense has not been demonstrated.

Nick Palmer

INSPECTOR