The Planning Inspectorate

Costs Decision

Inquiry Held on 30 January to 2 February 2024

Sites visit made on 2 February 2024

by M S Wiltshire CEng, MICE

an Inspector appointed by the Secretary of State

Decision date: 9th May 2024

Costs application in relation to Appeal Ref: APP/ V5570/W/23/3326166

- 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 Seven Capital (Highgate Hill) Ltd and SET for a partial award of costs against the London Borough of Islington.
- The inquiry was in connection with an appeal on grounds of non-determination to grant full planning permission for development described as full application for temporary use of existing buildings for non-residential artists' studios and exhibition space (Sui Generis).

Decision

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

Reasons

2. The Government's Planning Practice Guidance states that irrespective of the outcome of the appeal, 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 appeal process.

3. The application and the Council's response were all made in writing. Consequently, there is no need for the respective cases to be repeated.

4. The application relates to dealing with the fourth main issue for refusal, namely:

   "The implications of the proposed development for future CIL contributions and the implications of the claimed loss of CIL for the purposes for which it is levied and the relevance of those implications to the planning balance."

   It is argued that the reason for refusal is not only legally wrong, and therefore not a material consideration, but unreasonable. The parties disagreed on whether the CIL contributions from the residential development are a necessary material consideration, and made legal submissions in advance of the hearing.

5. I set out in my decision, notably at paragraphs 34-51 regarding whether the CIL contributions from the residential development are a necessary material consideration, additional policy matters about the Council's collection and expenditure of CIL, and the relationship between CIL and Section 106 (s106) obligations. Although I agreed that the substantial reduction of the projected CIL contributions are a material consideration, I attributed little weight to this

in the planning balance because there are a number of uncertainties which affect the weight that can be attached to this consideration, as detailed by both parties in their evidence. Regardless of my conclusions, these were all matters of professional judgement, and they were, in my view, given reasonable explanation and justification by the respective Counsels and witnesses for both parties. The differences between the Council's and Appellant's evidence on these matters were, therefore, a consequence of varying professional approach and opinion rather than being symptomatic of unreasonable behaviour.

6. Accordingly, the Council's case on this topic cannot fairly be said to have been unreasonable. This, I feel, is reflected in the appeal outcome.

7. Taking all the above into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case and that an award of costs is not justified.

M S Wiltshire

INSPECTOR