



Costs Decision

Inquiry Held on 16-19 and 23-25 July 2024

Site visit made on 22 July 2024

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2024

Costs application in relation to Appeal Ref: APP/B5480/W/24/3339526 Former Long-Term Condition Centre, Harold Wood Hospital, RM3 0AR

- 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 Bellway Homes Ltd (Thames Gateway) for a partial award of costs against the decision of London Borough of Havering Council.
 - The appeal was against the refusal of planning permission for the demolition of existing structures and comprehensive redevelopment of the site to provide 96 new residential dwellings (Use Class C3) comprising self-contained flats and houses in buildings between 2.5 and 5-storeys in height along with associated car parking, cycle parking, access arrangements, public realm, landscaping, services, and other associated infrastructure.
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Decision

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

Reasons

2. The appellant submits that London Borough of Havering Council (LBHC) has acted unreasonably insofar as: 1) they have not utilised a daylight and sunlight expert to substantiate their reasons for refusal; 2) the sustainability and highways arguments applied are generic and unsubstantiated, and do not make a material difference to the outcome of the case; 3) their approach to the appeal as a whole is disproportionate, including their witness disregarding evidence without due explanation; 4) excessive Counsel questioning of the appellant's witness's evidence; 5) their reasons for not entering into a bilateral s106 agreement are unjustified, wasting time and expense; and 6) the issues relating to Policy H5 where viability evidence is present are unjustified as is the Council's own costs claim. As a result, the appeal has caused unnecessary expense.
3. National Planning Practice Guidance (PPG) advises 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.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.

5. With respect to ground's 1-6 combined. I am satisfied that LBHC drawing on its full complement of professional officer resources were able to duly assess the implications of the appellant's daylight and sunlight evidence, to draw planning judgements and conclusions.
6. I appreciate that individual room splits and numbering in comparison to unit numbering referred to in the evidence as well as the revised plans tabled were administrative complications. The additional tree assessment variable information being a further factor.
7. I also acknowledge there was some misunderstanding of the perceived rigidity of the BRE Guidelines in comparison to the appellant's expert assessment. Additionally, the appellant made several notable improvements through revisions. That said, there were still some technical deficiencies highlighted overall, with or without embankment trees which do not make LBHC's criticisms, subsequent legal questioning, or length of questioning inappropriate.
8. Whilst the technical consultee advice was clear from both the Highway Authority and Transport for London it does not necessarily follow that LBHC should not seek greater accessibility ease to improve living conditions or to maximise active travel promotion connectivity for the locality. That is said bearing in mind all of the adopted design policies triggered which may not be fully accounted for in consultee advice, if taken in isolation.
9. The issues involved are also subject to the views of interested parties living in the area requiring further design response acknowledgement. For those reasons, despite my findings on the main issues of the case, I find that LBHC raised legitimate planning concerns which include a wider and appropriate appreciation of development plan policy than the appellant alleges.
10. Because of all of those combined circumstances referred to above, including the range of revisions produced by the appellant, I do not find LBHC's approach during the Inquiry was unreasonable. Although there is clearly a pressing housing and affordable home delivery shortage in the area, it does not automatically follow that permission should be granted with the sunlight, daylight, layout, aspect, housing type and connectivity and active travel limitations subject to dispute in mind, even when notional flexibility is applied.
11. With respect to the specific 'tilted balance' reference by LBHC's witness and which of the development plan policies were deemed out of date. It was revealed during proceedings that some elements of the proof of evidence were on reflection erroneous. This represented a small element of Inquiry time.
12. I accept there appears to have been some confusion on LBHC's side over the type of affordable housing product the appellant was committed to, referring to the assumption of 'Rent Plus'. Furthermore, the issue of whether 2 bed 4 person termed units is deemed to be for family occupation, or not, indicates to me there is inconsistency in some areas of the case.
13. Yet, beyond the actual stated bedroom numbers, the principle of seeking larger family sized units is not in itself an unusual circumstance, and there is due latitude for such argument to be applied in the context of the overall site layout considerations posed. Moreover, given viability complexity and the physical site constraints combined I find it is appropriate to allow flexibility for both the appellant and LBHC in the treatment of these issues.

14. Of the evidence heard at the Inquiry it was apparent that there was significant overlap with prevailing policy relative to the arguments put. This does bring into the equation London Plan Policy D3, and other contextual policies not explicitly referred to in the Decision Notice.
15. Given the absence of a 5-year housing land supply and functional design issues are embedded throughout the case, to ignore such policies would be unhelpful to facilitating a decision either from the perspective of the appellant or LBHC. Indeed, the officer's report gives parties a fuller list of policies for a decision maker to have regard to, if needed to be appropriately expanded upon. Indeed, it was appropriate to do so.
16. During proceedings, the nature of the legal agreement settled on (without prejudice to the outcome of the appeal), was by Unilateral Undertaking (UU). I recognise there are references to a bilateral agreement being developed in tandem with the UU referred to by the appellant, alongside their reasoning why the former would be more favourable. I agree it is both concerning and unfortunate that some abortive work seems to have occurred.
17. Even so, there is no dispute by LBHC that the UU would be an ineffective legal mechanism. It was in the appellant's gift to have pursued such a route from inception of the scheme, if it was minded to. I am also aware that the BNG provision within the UU itself involves some nascent delivery elements which are not demonstrated to be an established administrative practice by LBHC.
18. There are no doubt elements of LBHC's case which have shortfalls against some of the technical aspects covered including the affordable housing product utilised when formally examined. Nonetheless, there are broader underpinning aspects which the reasons for refusal intersect. Accordingly, this offers me compelling circumstance as to why they found the scheme to be unacceptable. Thus, I disagree the reasons for refusal are not adequately substantiated.
19. I find that overall, LBHC have given satisfactory evidence both orally and in writing to justify their reasoning and accounting for error, when having regard to the full provisions of the development plan, national planning policy and other relevant considerations. Accordingly, their concerns were not baseless.
20. My findings on the opposing costs claim are made under separate cover in direct response to it. The action of applying in itself does not provide me a convincing basis to support the appellant's claims, as there was some scope available to pursue an amended planning application, in light of all revisions made during the appeal period.
21. In conclusion, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the appellant's costs claim fails.

M Shrigley

INSPECTOR