



## Costs Decision

Inquiry held on 23-25 July, 30 July-2 August, 13-16 August, 28-30 August and 5 September 2024

Site visits made on 4 and 24 July and on 10 September 2024

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 January 2025**

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### **Costs application in relation to Appeal Ref: APP/E5330/C/23/3332209 Mast Quay Phase II, Woolwich Church Street, London, SE18 5BG**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Royal Borough of Greenwich for a partial award of costs against Fincraft Limited.
  - The Inquiry was in connection with an appeal against an enforcement notice alleging the erection of a 15 storey tower block known as Sky Sail House and a tower block of 23 storeys known as Main Sail House, with linked tiered 11, 9 and 6 storeys known as Moon Sail House.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **The submissions for the Royal Borough of Greenwich**

2. The application for costs and the response to the submissions on the application made by the Appellant were made in writing.

### **The response by Fincraft Ltd**

3. The Appellant's submissions on the application was made in writing.

### **Reasons**

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
5. The Appellant raised two matters in their ground (f) appeal; first, that optional enhancements could be made to the development; and second, the human rights of current residents of the development. The ground (f) appeal would only have been considered if the ground (a) appeal was unsuccessful. So optional enhancements to the development that might make it acceptable in planning terms must be considered in the ground (a) appeal. The human rights of residents is a matter to weigh in the planning balance, which is considered in the ground (a) appeal, and is not a matter to influence whether the requirements of the enforcement notice are excessive or not.
6. The relevance of the two matters supporting the ground (f) appeal should have been apparent to the Appellant when they were considering which grounds of

appeal to make, or at the latest when they were preparing their statement of case. However, the Appellant pursued the ground (f) appeal up until the Inquiry; only then was it withdrawn. This was unreasonable and the Council has incurred wasted expense in the appeal process. But the wasted expense is limited to their consideration of the two matters only in the context of the ground (f) appeal, and does not include expenses incurred in addressing the two matters in themselves, because they are matters which would, in any event, be considered in the ground (a) appeal.

7. This is indeed "...a highly unusual case requiring a highly unusual degree of detail in relation to submitted plans". However, the need for production and submission of a set of as-built drawings was raised in a Planning Contravention Notice (PCN) dated 22 March 2023, and the need for submission of such a set of drawings should have been apparent to the Appellant when they made their ground (a) appeal on 30 October 2023. In their statement of case dated 19 January 2024 the Appellant lists the drawings that illustrate the existing development, so they clearly had started the process of preparing a set of as-built drawings. The need for such a set, in addressing the possibility that planning permission might be granted, was also mentioned at the case management conference on 5 July 2024.

8. It is surprising, given modern surveying techniques, that the Appellant struggled to produce an agreed set of as-built drawings. Discrepancies between the development and the drawings produced were raised by Council Officers and the drawings remained under review even during the Inquiry; the final, and agreed, set of as-built drawings was submitted on 8 August 2024. That this is an unusual case is not relevant, nor is the size of the development. Drawings had been produced before 19 January 2024 and the Appellant had ample time, between then and the date for submission of proofs, or at the latest by the start of the Inquiry, to ensure that drawings accurately illustrated the development as built.

9. The burden of checking the drawings before and during the Inquiry fell on Council Officers, and the need to do so constitutes unreasonable behaviour on the part of the Appellant. Though the Officers will have been preparing for and attending the Inquiry, the time spent checking drawings will have been in addition to other duties and will have incurred wasted expense.

10. The ground (a) enforcement appeal differs from a prospective planning application but they have similarities, apart from anything else both would result in either a refusal or grant of planning permission. One difference is that the enforcement appeal was time limited by being considered at an Inquiry, whereas a planning application for a major development is not so time limited. It is true that many matters that were raised before and at the Inquiry generated documents and drawings, and required the Council's witnesses to consider and respond to those documents and drawings swiftly.

11. The Council's witnesses did not have the luxury of the time afforded during consideration of a planning application, but it was not unreasonable for the Appellant to produce evidence to ensure that all matters, principally those raised by the Council, were properly considered. Furthermore, for a major development many matters of detailed design are the subjects of conditions and it is not surprising that many of the issues raised by the Council, and which generated further submission of evidence, did, nevertheless, result in the imposition of conditions on the planning permission granted.

12. Preparing for and attendance at the Inquiry was challenging for all those involved. All witnesses were required to demonstrate flexibility, to provide swift responses to new evidence, and to contribute to the smooth running of the Inquiry. This they did with commendable professionalism. Other than as detailed above none of the matters and instances mentioned in the application for a partial award of costs justifies a conclusion that the Appellant has acted unreasonably.

#### Conclusion

13. The Appellant has acted unreasonably by making an unnecessary ground (f) appeal, by not withdrawing that appeal until after the Inquiry commenced, and by not preparing and submitting a set of as-built drawings of the development at the earliest opportunity. The Council has incurred wasted expense in addressing matters raised in the ground (f) appeal but the wasted expense is limited to their consideration of the two matters only in the context of the ground (f) appeal, and in checking and re-checking submitted as-built drawings before and during the Inquiry. In these respects the application for a partial award of costs is warranted.

#### **Costs Order**

14. 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 all other enabling powers in that behalf, IT IS HEREBY ORDERED that Fincraft Ltd shall pay to Royal Borough of Greenwich, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing matters raised in the ground (f) appeal but only in the context of the ground (f) appeal, and in checking and re-checking submitted as-built drawings before and during the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.

15. The Applicant is now invited to submit to Fincraft Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*John Braithwaite*

Inspector