



Costs Decision

Inquiry held on 21-24 and 27 January 2025

Site visit made on 22 January 2025

by J Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2025

Costs application in relation to Appeal Ref: APP/E5330/W/24/3352432

The Albion, 48 Woolwich Church Street, LONDON, SE18 5NN

- 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 Lakeview Estates (UK) One Limited for a full award of costs against Royal Borough of Greenwich.
 - The inquiry was in connection with an appeal against the refusal of planning permission for provision of a part 9/part 13 storey mixed use building comprising of basement level disabled car parking space, residential cycle storage and plant room. Ground floor level mixed use (Class E use); commercial cycle storage; residential and commercial refuse storage with 48 self-contained flats above.
-

Decision

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

The submissions for Lakeview Estates (UK) One Limited

2. The costs application was mainly submitted in writing. The applicant considers that the Council has behaved unreasonably with respect to the substance of the matter under the appeal, particularly with regard to reasons for refusal (RfR) 1 and 2. With regard to RfR 1, the applicant considered that the Council have prevented/delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and extant planning history.
3. RfR1 relating to the height, scale, bulk and massing of the development in relation to the Grade II listed Chimney to Steam Factory, and the setting of the Thames Barrier and Bowater Road Conservation Area is contrary to the Council's previous 2017 decision, where permission was granted for materially the same scheme, albeit the approved scheme was approximately a storey taller in height. The Council's decision to refuse permission is unsupported by any objective analysis that introduces any new or materially relevant issues. In RfR1, the Council is failing to determine a similar case in a consistent manner, having regard to the scheme that is recently expired, where there has been no material change in circumstances.
4. In regard to RfR2, the Council has behaved unreasonably with respect to the substance of the matter under appeal. It's interpretation of paragraph 66 of the National Planning Policy Framework (the Framework) (December 2023 version) is considered contrary to national policy. The applicant proffered a legal opinion, which was not accepted, and the Council has failed to produce evidence to substantiate their interpretation. The Council's own independent assessors agreed with the applicant's consultants that the proposed development cannot contribute

towards affordable housing, whilst remaining viable. Contrary to this agreed position, the Council have resolved to give limited weight to the agreed viability position on the basis that there is a need for affordable housing, and that the Council have historically failed to achieve their required targets. The Council's position in regard to the RfR2 is considered to be vague, generalised and unsupported by objective analysis.

5. Orally, the appellant reaffirmed that the inadequate assessment of the 2017 planning permission and lack of evidence to refute the unreasonableness of the Council's approach. The failure to determine an application in a consistent manner is unreasonable behaviour.

The submissions for the Royal Borough of Greenwich

6. The response was mainly made in writing. The Council does not accept that it has behaved unreasonably. The mere fact that the applicant (or even the Inspector in making its decision) disagrees with the analysis and decision of the Council to refuse planning permission and/or the position adopted in an appeal does not mean that the Council has acted unreasonably. Reasonable disagreement and reasonable exercise of judgment is a part of the planning system. Many of the matters here are matters of planning judgment.
7. In any event, much more evidence is still to come forward as part of this Inquiry process. The start letter was issued the same day that the Council were notified of the applicant's application for costs. The application is, therefore, wholly premature. It will only be evident at the Inquiry whether or not, the Council has substantiated its appeal case. Since the issuing of the start letter, the Council's Statement of Case has not yet been submitted. Proofs of Evidence have not even been exchanged yet and no Case Management Conference (CMC) been held. Parties have not entered into discussions about a Statement of Common Ground. The Inquiry is at an extremely early stage and the consideration of the Council's case will require further evidence to come forward and scrutiny as part of the Public Inquiry process.
8. The applicant's case in making this application is wholly general in nature and is, in effect, that it was unreasonable for the Council to have refused planning permission. As a matter of judgement, based on specialist Conservation Officer advice, the proposed development is considered to cause less than substantial harm to the setting of the listed Chimney and the setting of the Conservation Area. The Council has had proper regard to the relevant policies in the development plan and the Framework. As a matter of judgement, the public benefits of the scheme do not outweigh this harm which is plainly a perfectly rational exercise of its judgment. The Council therefore has not prevented/delayed development that should clearly be permitted, having regard to the scheme's non-compliance with the development plan, national policy and even with the Council having regard to the expired consent.
9. Should the Council's refusal on this ground succeed, clearly, the applicant's case will not be substantiated. Even if the applicant were to succeed, the Council's judgement on the heritage matters was not unreasonable and the Council will call expert witnesses, with specialist heritage expertise, to substantiate the RfR. It has plainly not behaved unreasonably. At least part of the Council's case accords with the view of the Greater London Authority and the applicant's case now relies

- heavily on a supplementary heritage statement produced after the determination of the application (paragraph 2.3 of the applicant's appeal statement).
10. The Council's previous 2017 decision has expired and does not provide a fallback position. Moreover, the previous planning permission was considered without the benefit of specialist Conservation Officer advice and was before the designation of the Conservation Area in March 2018. As such, there were material changes in circumstances since the grant of the previous planning permission.
 11. The Council acknowledges the grant of the previous planning permission is a material consideration, but the Council is entitled to depart from a previous decision if it gives clear reasons for doing so. The Council has done so and will do so at the appeal, calling upon specialist heritage evidence to substantiate RfR1. Furthermore, the Inspector will consider and make a decision on the appeal scheme reaching its own judgement, will determine what level of heritage harm he considers arises, and whether or not that harm is outweighed and will provide reasons for doing so. Those are plainly matters of judgment.
 12. In its committee report, the Council was clear that the scheme is unviable but based on policy that there was a sound ground for refusing the planning application due to insufficient affordable housing as set out in RfR2. The Council has, as of 29 October 2024, confirmed to PINS and the applicant (and re-confirmed to the applicant on the 30th October 2024) that it does not wish to pursue this RfR in this appeal. The Council has acted wholly reasonably and properly in reviewing its case after the submission of the appeal. The Planning Practice Guidance (PPG) says that a local planning authority may act unreasonably where it does not review its case promptly following the lodging of an appeal.
 13. The Council has, therefore, on a straightforward application of the PPG behaved reasonably as it has reviewed its case and decided not to pursue RfR2. The Council has considered, for example, the proposed changes to the Framework to remove the reference in paragraph 66 to an expectation that 10% of homes will be affordable units within a major development. This consultation was published after the Council refused planning permission. There was, therefore, a material change in circumstances and the Council has acted wholly reasonably in its approach to this appeal.
 14. The Council has withdrawn RfR2 at an early stage. The Council does not accept, therefore, that even if the Inspector considered refusing planning permission on RfR2 was unreasonable (noting that costs cannot be claimed for the period during the determination of the planning application), plainly no costs have been incurred in the appeal relating to RfR2.
 15. Further, even if unreasonable behaviour was concluded, the applicant has not demonstrated that any unreasonable behaviour has caused the applicant unnecessary or wasted expense in the appeal process. In any event, due to the early stage of the appeal, the applicant will have incurred limited expense. In any event, the issue as to affordable housing was not one requiring specific viability evidence, it was a matter for the planning witness who will have had to be instructed anyhow. The applicant has plainly not incurred any unnecessary or wasted expense as the appeal plainly had to be made and the costs incurred to date anyhow.

16. In summary, the applicant's submissions that there has been unreasonable behaviour and that such behaviour resulted in unnecessary and/or wasted expense is not accepted for the reasons set out above. The issues raised will be explored in further detail during the appeal process. The PPG is clear that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs. That is plainly the case here.
17. Orally, the Council made brief comments at the Inquiry. The Council has substantiated its case through specialist heritage evidence which involves judgement. The Council is entitled to come to a different decision on the current proposal compared to the 2017 planning permission where it has been reasoned. Furthermore, there has been no inconsistency in dealing with the 2017 planning permission as there has been a material change in circumstances.

Reasons

18. Parties in planning appeals normally meet their own expenses. However, the 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.
19. For RfR1, the Council has provided witness evidence where the significance of the heritage assets and their setting has been detailed. It has further identified the adverse impacts as set out in parts 8 and 9 of its proof which was also orally presented taking into account the nature of the scheme. It has further indicated harm would not be outweighed by public benefits. As to the 2017 planning permission, it has provided evidence to indicate its position of limited weight to this decision, including a change in circumstance, the designation date of the Conservation Area and a lack of specialist Conservation advice.
20. Its assessment has taken into account local and national policy, and Historic England advice. Irrespective of whether the applicant agrees with the Council's position, there is ultimately judgement necessary in weighing up the considerations in the necessary assessments and balances. Importantly, as indicated above, it has provided evidence to support its position. For all these reasons, the Council has substantiated its reason for refusal, carried out an objective analysis to evidence its position, including consideration of the 2017 planning permission proposal.
21. For RfR2, the Council has reviewed its position early in the appeal process such that its position, in withdrawing its objections, was clear at the CMC. At the Inquiry, there was clearly a need to address third party comments on viability and therefore, time and expense was necessarily incurred at this time. Even if unreasonable behaviour was considered to have occurred, the applicant has not proven unnecessary or wasted expense relating to RfR2 during the appeal process.

Conclusion

22. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

JParsons

INSPECTOR