Planning Inspectorate

Costs Decision

Site visit made on 3 February 2025

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2025

Costs application in relation to Appeal Ref: APP/E5900/W/24/3356184
Sotherby Lodge, 41 Sewardstone Road, London, E2 9JQ

- The award 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 appeal was made by Gracewood Group against the refusal of the London Borough of Tower Hamlets for planning permission for external re-cladding of the existing 5-6 storey building and 2-storey roof extension consisting of 9no dwellings, with balconies and reconfiguration of existing cycle and bin stores.
- **Summary of award: A partial award is made against the appellant.**

Procedural Matters

1. Following the issue of my decision on 17 June 2025 the Planning Inspectorate's Costs and Decision Team (CDT) wrote to the appellant to say that I was considering whether to make an award of costs against the appellant.

2. The reason being, Policy D.SG5 of the Tower Hamlets Local Plan 2031 (adopted 2020) (the Local Plan) contains an express policy requirement that, where an applicant considers an affordable housing contribution unviable, a viability assessment should be provided to support that position, and that assessment may be subject to independent scrutiny by appointed experts at the applicant's cost. No assessment was submitted at the application stage but was then submitted with the appeal. Given that parties in planning appeals normally meet their own expenses, this could be argued to circumnavigate the policy requirement and therefore burden the Council with unreasonable and unnecessary costs at the appeal stage.

3. The appellant responded in accordance with the timetable CDT set out.

The response by the appellant

4. The appellant states that the development plan is not clear that affordable housing should apply to minor development, but believed it should not, and so it is not unreasonable that a viability assessment was not submitted at the application stage. The appellant's position before the appeal is conveyed by the 'Planning & Impact Statement' (the statement) which accompanied the original application. The appellant offers six considerations that the appellant had in mind when the application was submitted. The appellant then subsequently submitted a viability assessment following consideration of the Council's second reason for refusal.

5. In addition, the Council validated the application without a viability assessment. Had the Council made it invalid, there could have been an appeal, at which point all costs associated would likely have been met by the individual parties within the appeal process. There was no dialogue prior to permission being refused.

Reasons

6. 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.

7. By any reasonable interpretation the statement does not establish what the appellant suggests it does. It rehearses that there is no national policy requirement for affordable housing contributions for minor development and that the Framework states that contributions should not be sought for minor development. It articulates that Policy H4 of the London Plan (adopted 2021) requires contributions for major development. However, Policy H4 does not seek to preclude contributions being made on smaller sites, and the statement does not say or suggest that it does.

8. The statement then engages directly with the Local Plan requirement for affordable housing contributions for minor schemes. It makes a viability case for the proposal relating to recladding costs, but without the viability assessment necessary to substantiate that position. It states that Local Plan policy is complied with because contributions are not viable. If it was the appellant's case that contributions simply should not apply to minor development as a matter of principle, the statement should have clearly said so. It does not. The six considerations put forward are a belated attempt to reframe and augment the case made at the application stage and are not consistent with the actual approach to policy and viability that the statement takes.

9. What the statement establishes is that the appellant was aware at the application stage of the development plan requirement for an affordable housing contribution. It was already seeking to argue that such a requirement was financially unviable but opted not to substantiate that argument with a proper viability assessment until the appeal. Whether the intention or not, this conduct allowed the appellant to rely on the convention that parties in appeals normally meet their own expenses, which had the effect of circumnavigating the policy requirement that viability assessments be subject to independent scrutiny at an applicant's cost. This behaviour has unreasonably burdened the Council with unnecessary costs at the appeal stage.

10. I am not aware that viability assessments are a validation requirement. There is no expectation that the Council should have invalidated the planning application or chased for a viability assessment prior to refusing planning permission.

11. An award of costs is therefore justified.

Costs Order

12. 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 Gracewood Group shall pay to the London Borough of Tower Hamlets, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the Council's viability evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed. The Council is now invited to submit to Gracewood Group, 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.

Matthew Jones

INSPECTOR