



Costs Decision

Hearing held on 4 September 2025

Site visit made on 4 September 2025

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2025

Costs application in relation to Appeal Ref: APP/Z5630/W/25/3364278

28-46 Cromwell Road, Kingston Upon Thames KT2 6RJ

- 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 Royal Borough of Kingston Upon Thames for a full award of costs against Ms Emma White, Aroch Limited.
 - The appeal was against the refusal of planning permission for 'demolition of existing buildings and redevelopment of site to provide a building comprising part one, two, four, five, six and seven storeys in height (including a basement) incorporating residential units, a replacement childrens nursery (Class E(f)), a community use space (Class F1 and F2) and associated Blue Badge parking, cycle parking, refuse storage, plant, landscaping and amenity space' without complying with conditions 1 and 44 attached to planning permission Ref 21/01086/FUL, dated 25 November 2022.
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Decision

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

Background and Procedural Matters

2. The application for costs was submitted in writing during the Hearing. As I agreed with the parties, the appellant's response to the application and final comments for the Council were to be made through written submissions following the close of the Hearing, albeit that the Council did not ultimately provide any final comments.
3. The Council confirmed during the Hearing that the costs application was a partial application in respect of the second reason for refusal of the planning application which essentially concerns the adequacy of evidence to demonstrate that the proposal could not provide on-site affordable housing. I have considered the costs application accordingly. The parties' submissions have otherwise been made in writing and because they are therefore a matter of record, it is not necessary to rehearse them here.
4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('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.
5. Awards of costs against appellants may be either procedural in relation to behaviour completing the appeal process or substantive which relates to the planning merits of the appeal. The PPG advises that an appellant is at risk of a substantive award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. Examples given of when this may occur include when the development is clearly not in accordance with the

development plan, and no other material considerations are advanced that indicate the decision should have been made otherwise; or where other material considerations are advanced, there is inadequate supporting evidence.

6. The PPG further outlines that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
7. In their response, the appellant raised concerns that the Council's application does not reflect the PPG guidance and invited me to conclude that it did not amount to a valid costs application. To my reading however, the only stipulations in the PPG relevant to how a cost application must be made concern the timescales and whether submissions should be written and/or oral. I have no firm reason to find that the application would fail to adhere to the guidance on these matters.
8. Furthermore, costs can only be awarded in relation to unnecessary or wasted expense at the appeal, but the PPG explains that behaviour and actions at the time of the planning application may be relevant to consideration of whether or not costs should be awarded. That the Council's application refers to application stage matters does not therefore mean it is necessarily invalid or inadmissible.
9. Any applicant for costs would undoubtedly be well-advised to have regard to and apply other guidance in the PPG on the circumstances in which an award of costs may be made and what should be demonstrated in an application, not least to assist the decision-maker. To my mind however, such matters are not directly relevant to the initial admissibility of any application and I find no clear indication in the PPG that a failure to follow the guidance on these matters would invalidate an application. Nor have I been directed to any other guidance or legislation which would otherwise persuade me that the application would not be admissible. I have therefore considered the application as it was made.

Reasons

10. Policies DM 15 of the Core Strategy 2012 and H4 of the London Plan 2021 include expectations for the provision of affordable housing to be made on site unless there are exceptional circumstances and an alternative approach is justified. In this case, the appellant had proposed a financial contribution in lieu of on-site affordable housing, advising that they were unable to generate any interest from Registered Providers of affordable housing ('RPs') for 13 shared ownership units which were considered potentially viable.
11. Having found in my appeal decision that no affordable housing provision would be viable, it was not necessary to my assessment of the appeal to consider whether or not there was adequate evidence to justify a financial contribution rather than on-site provision.
12. Considering this matter now however, I note that the Council raises specific concern that there was a failure to adequately engage with RPs in respect of provision of on-site affordable housing with particular reference to the level of detail, specifications and timescales given to RPs to enable them to consider the units. However, the Council was unable to direct me to any specific policy or guidance in respect of the expected scope of information or timescales for engagement with RPs that the application had failed to meet or take account of.

Whether or not engagement was adequate therefore seems to me to reflect matters of planning judgement.

13. I acknowledge that the period of 7 days which the appellant gave RPs to respond to a request seeking expressions of interest for a scheme of 13 shared ownership dwellings in March 2025 was relatively short. The accompanying information which referred to the planning application reference, assumed mix and assumed values was also comparatively limited. However, it is clear from the submitted evidence that there had been a prior history of engagement with RPs with phases of correspondence dating back to at least March 2023 in respect of affordable housing units on the site. Many of the RPs approached again in March 2025 could therefore be reasonably expected to already have some familiarity with the scheme.
14. Moreover, over two thirds of the organisations approached in the March 2025 round responded indicating that they would not be interested in progressing the site. To my mind, this represents a reasonable response rate, albeit that there remain some organisations who have not provided a firm view on the offer.
15. Of the responses that were received, many gave clear reasons for not making an offer relating to the location or scale of the scheme, or advising that they were not currently pursuing new developments/schemes under s106 of the Town and Country Planning Act 1990 (as amended). Some also referred specifically to consideration of the site on previous occasions.
16. One of the negative responses in March 2025 was from the Director of Housing at the Council. The Council's appeal evidence included a further email from the Director dated 12 June 2025 suggesting that a review of the Council's position regarding the offer could be requested if more detailed information was provided and that the Council would certainly be interested in the units, especially if they were to be made available for social housing with the appropriate grant allocation or approvals. However, it appears that this was prompted by the appeal process, and I was informed that there had been no further response or engagement by the Council's housing team by the time of the Hearing to indicate a genuine interest in pursuing the site contrary to the initial response.
17. Having regard to the number and content of the responses received, any suggestion that the level of information or period given by the appellant for expressions of interest in affordable housing on the site was deficient so as to prevent RPs from considering the units positively is not in my view compelling. Furthermore, the provision of a financial contribution in lieu of on-site affordable housing would be contrary to the general expectations of the development plan. Nevertheless, I am satisfied that the appellant has provided extensive and directly relevant information which was reasonable to support their position that there were exceptional circumstances to justify the approach.
18. The Council was entitled to exercise its judgement in assessing the planning application and conclude that the applicant's evidence did not justify a financial contribution. With regard to the overall package of available information however, this is not a case where I consider it realistic to suggest that the application was premature or accompanied by inadequate supporting evidence of material considerations such that the Council could not reasonably have accepted the

appellant's proposal for affordable housing at application stage. Nor is it credible to suggest that the appeal had no reasonable prospect of succeeding.

19. It was not therefore unreasonable of the appellant to pursue the appeal. Notwithstanding the appellant's concerns that the Council's application did not explain what costs and expenses had been incurred, I consequently find that the Council has not been put to unnecessary or wasted expense in the appeal process.

Conclusion

20. For these reasons, I find that unreasonable behaviour by the appellant resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for an award of costs is refused.

J Bowyer

INSPECTOR