

COSTS REFUSED



Costs Decision

inquiry opened on Wednesday 1 March 2000

by David Asher BA DipTP MRTPI

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

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Application : T/APP/X5210/A/99/1032238

- The application is made under the Town and Country Planning Act 1990, Section 78 and the Local Government Act 1972, Section 250(5)
- The application is made for a full award of costs by Galliard Homes Ltd against the Council of the London Borough of Camden.
- The site is located at 17 - 35 William Road, NW1.
- The inquiry was in connection with an appeal against the refusal of planning permission for the redevelopment of the site by the erection of a six-storey building with one light industry unit (Class B1c) on the ground floor and 46 flats (Class C3) on the upper floors, including 12 flats for social housing.

Decision: The application for an award of costs is refused.

L12/11/B

The case for the appellants

1. It was argued first that the following behaviour taken as a whole was unreasonable, contrary to the advice in the Appendix to Circular 8/93 which sets out circumstances where local planning authorities are at risk of an award for costs being made against them:
 - policy EC5 of the UDP had been interpreted wrongly, particularly since the words "where planning permission is required" were not added until the application had been determined, and the policy did not apply in this case without them;
 - despite negotiating with the appellants for 14 months, the Council did not indicate that there was an objection in principle to the scheme based on this policy;
 - the Council appears to have relied on information from a sites survey of 1996, which was not made available in full to the inquiry, although there is a reference to it in the report to Committee;
 - without this information it was impossible to judge whether the appeal site was of high or low quality, which was important since policy EC5 only applies to high quality sites;
 - no reasonable authority would refuse permission for 46 flats in the face of the appellants' evidence on noise, and the acceptance of the proposed affordable units by the likely registered social landlord.
2. More specifically it was argued that contrary to the advice in Annex 3 of the Circular:
 - the reason for refusal was not complete or supported by evidence, contrary to paragraph 8;
 - a senior officer had intervened after a long period of negotiation with an objection in principle not supported by reasonable planning grounds, contrary to paragraph 9;

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- the withdrawal of evidence on noise by the witness at the inquiry indicated that the Council had not considered the use of planning conditions contrary to paragraph 11; if the Council had accepted the use of conditions earlier, noise evidence would not have been necessary at the inquiry, and the appellants were put to unnecessary expense in producing it;
 - no substantial evidence had been produced, contrary to paragraph 12; and
 - since the proposal complied with the development plan, refusal was contrary to the advice in paragraph 13.
3. In all these circumstances the Council had acted unreasonably.

The case for the Borough Council

4. The general conditions for an award of costs are set out in paragraph 6, Annex 1 of Circular 8/93 and it was argued that the Council had not acted unreasonably in relation of any of the advice there. In particular, the appellants' general arguments did not show that costs had been incurred in relation to the appeal.
5. The Council had not acted unreasonably in giving noise evidence since it was quite proper for expert witnesses to give different views in circumstances where there are no prescriptive standards. Nor was the witness's concession on the use of conditions at the inquiry an indication of unreasonable behaviour since discussion on conditions was held without prejudice to the Council's case.
6. It was not unreasonable to interpret policy EC5 differently from the appellants. Moreover, the additional wording in the policy had no bearing, since the policy could not apply where planning permission was not needed. The 1996 survey report was mentioned in the Officer's report to Committee on the appeal application. However, since the analysis of the application against the criteria in policy EC5 was set out in full to Members it was clear that the survey report was not relied on. The Council had therefore not acted unreasonably in refusing to publish the full survey report.
7. The role of the senior officer in the process leading up to the Committee report was entirely normal in a hierarchy of officers dealing with the case. It was not unreasonable for the senior officer to have a different view from the others involved. If this view had prevailed earlier in the process it could still have led to an appeal, and the appellants had therefore not incurred additional costs.
8. For all these reasons it was argued that the Council had not acted unreasonably.

Inspector's reasoning

9. I will deal first with the arguments made in relation to the Appendix in Circular 8/93. The Council did not act unreasonably in applying policy EC5 in this case, since the proposal was for redevelopment, whether or not a change of use was involved. I can understand the appellants' frustration at receiving a refusal in principle in this case after a long period of negotiation with the Council during which the appeal application was amended several times. However, as the Council argued, this does not in itself amount to unreasonable behaviour, or meet the general conditions set out in the Circular for an award to be made.

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10. The use made by the Council of unpublished survey material in determining the appeal application was explored at some length at the inquiry, and extracts of the report were made available at my request. From what I read of this material, and from the detailed analysis of the scheme in the Officers' report to Members on the application, I am satisfied that the Council did not act unreasonably in relying on unpublished material.
11. I turn now to the arguments in this application relating to Annex 3 of the Circular, and I will deal first with the noise evidence. Given the mix of industrial and residential uses in the appeal scheme, noise was quite properly a major concern for the Council, both to ensure that industrial use could continue on the ground floor, and to protect people living in the flats.
12. At the inquiry it became clear that the Council's main outstanding concern, the effect of intermittent loud noises, could be overcome by a condition. It seems to me, however, that this conclusion was only possible because of the noise evidence which had been submitted. This is because it could be shown that the guidance on which the condition would be based could be met by the proposed mitigation measures.
13. The use of conditions to control noise or mitigate its effects is set out in paragraph 78 of Circular 11/95. In this scheme, with flats directly above an industrial unit, I consider that it was necessary to show that such mitigation measures could be effective before being made the subject of conditions. In this case, with industry and flats so close, I am not convinced that it would have been desirable simply to impose conditions in the expectation that, once permission had been granted, mitigation measures could make the scheme acceptable. For this reason I consider that noise evidence was needed at the inquiry. The appellants were not, therefore, put to unnecessary expense in producing it, despite the Council witness's acceptance that there was no intrinsic noise problem which could not be overcome by mitigation measures assured by planning conditions.
14. Paragraph 9 of the Annex does not apply in this case since it refers to Members taking a decision contrary to the officer recommendation. In this case it is not unreasonable for a senior officer to take a different view from his subordinates. Although I have not accepted the Council's case, in broad terms I find that evidence was produced to support it, as required by paragraphs 8 and 12 of the Annex. Again, although I have not supported the Council, its view that the proposal did not comply with policy EC5 was not unreasonable, contrary to paragraph 13 of the Annex.
15. For all these reasons I conclude that the Council did not act unreasonably.

Conclusions

16. I do not consider that unreasonable behaviour, as described in Circular 8/93, has been demonstrated and I therefore conclude that an award of costs is not justified. I shall exercise the powers transferred to me accordingly.

David Asher

DAVID ASHER