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## Costs Decision

Hearing held on 26 November 2015 and 13 January 2016

Site visit made on 26 November 2015

**by Phillip J G Ware BSc DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 February 2016**

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### **Costs application in relation to Appeal Ref: APP/X5210/S/15/3133785 22 Tower Street, London WC2H 9TW**

- 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 applications are made by the Council of the London Borough of Camden for a partial awards of costs, on two separate grounds, against English Rose Estates (Tower Street) Limited.
  - The Hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the modification of a planning obligation.
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### **Decision**

1. The application for a partial award of costs related to the adjournment is allowed in the terms set out below.
2. The application for a partial award of costs related to the floorspace calculation is refused.

### **The submissions for the Council of the London Borough of Camden**

#### *Costs application related to the adjournment*

3. The appeal was scheduled to be heard at a Hearing on 26 November 2016. On the afternoon before the Hearing the Council (and the Planning Inspectorate) received additional information from the appellant in response to the Council's statement.
  4. The issue is not the need for the material, but the very late submission of the material, which necessitated an adjournment. The appellant should have instructed their surveyor to prepare the material earlier so it could have been produced in time for it to be properly considered.
  5. The Council did not have time to review the information and requested an adjournment, which was granted. If this information had been provided in a timely manner there would have been no need for the adjournment. A number of Council officers and consultants attended the abortive session of the Hearing, and their presence was necessary.
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*Costs application related to the floorspace*

6. The Council's surveyors had to expend time and incur expense as a result of having to assess the appellant's revisions to the floorspace figures. These should have been correctly calculated at the outset.
7. It was not unreasonable for the Council to rely on the appellant's architect's CAD-based floor measurements.

**The response by English Rose Estates (Tower Street) Limited**

*Costs application related to the adjournment*

8. The additional information was provided shortly before the Hearing and covered a range of matters. Although the Hearing was adjourned due to the submission of this material, this conduct does not reach the high threshold of unreasonableness such that costs should be awarded. The information was submitted so as to ensure that the Inspector was provided with up to date material.
9. The position should be considered against the Council's failure to properly engage with the draft Statement of Common Ground.
10. The attendance of all the Council officers and advisors was not accepted as having been necessary.

*Costs application related to the floorspace revisions*

11. Both parties engaged expert chartered surveyors to advise on viability issues, and a number of reports have been prepared.
12. The experts sought, as part of the normal process, to identify perceived errors in the case of the opposing party. Errors were made by the Council's advisor. It is inevitable that errors will creep into calculations and appraisals, but this does not constitute unreasonable behaviour

**Reasons**

13. 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.

*Costs application related to the adjournment*

14. Planning Practice Guidance makes it clear that a procedural award may be made against an appellant if fresh and substantial evidence is introduced at a late stage necessitating an adjournment.
15. I do not criticise the appellant's wish to provide up to date information to assist the Hearing. However the timing of the information, without prior warning, late on the day before the Hearing was entirely unreasonable and meant that the Council would have been put at a disadvantage if the Hearing had continued on that day. Additionally I had not had the opportunity to properly read and assess the material.
16. I make no comment on the need for particular Council officers and consultants to attend the Hearing, as that is a matter which goes to the quantum of the costs.

17. I find that unreasonable behaviour, as described in Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in relation to the adjournment.

*Costs application related to the floorspace revisions*

18. In dealing with matters of measurement and assessment, it is far from uncommon for unforced errors to be revealed in the case of one party or the other. From the submissions it appears that this occurred in the exploration of both parties' cases.

19. Unfortunate though this may be, and although it almost inevitably means that further costs are incurred, it is a normal part of the process. There is no suggestion that the appellant's error was anything more than that, and this does not constitute unreasonable behaviour.

20. I find that unreasonable behaviour, as described in Planning Practice Guidance, has not been demonstrated and that a partial award of costs is not justified in relation to the floorspace revisions.

**Costs Order**

21. 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 English Rose Estates (Tower Street) Limited shall pay to the Council of the London Borough of Camden, the costs of the proceedings related to the adjourned Hearing on 26 November 2016; such costs to be assessed in the Senior Courts Costs Office if not agreed.

*P. J. G. Ware*

Inspector