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## Costs Decision

Hearing Held on 5 February 2020

Site visit made on 5 February 2020

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

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### **Costs application in relation to Appeal Ref: APP/G5180/W/19/3234830 Potters Yard, Turpington Lane, Bromley BR2 8JN**

- 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 Langford Walker for a full award of costs against the Council of the London Borough of Bromley.
  - The hearing was in connection with an appeal against the refusal of planning permission for erection of two detached bungalows for affordable housing.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (the 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. The submissions of the parties in respect of costs were submitted in writing over the course of the appeal.
3. The appellants' costs application is based on a number of grounds, namely:
  - That the Council misdirected itself in respect of planning policy, more specifically:
    - Paragraph 145(g) of the National Planning Policy Framework (the Framework).
    - Paragraph 145(f) of the Framework and Policy 49 of the Local Plan.
  - An unreasonable refusal in respect of failure to identify an affordable housing provider.
4. In respect of **Paragraph 145(g)** of the Framework, the second strand of this exception refers to the development of previously developed land for affordable housing which would not cause substantial harm to the openness of the Green Belt. The appellants contend that the Council has failed to address the matter of substantial harm.
5. I have some sympathy with the appellants on this matter in that the Council's written evidence specifically in respect of the second strand of paragraph 145(g) is limited. However, I am mindful that the Council's comments on this matter were made within the context of the limited evidence initially provided by the appellants with regard to delivering affordable housing, which is an

- important factor in triggering the second strand of 145(g). Furthermore, the Council elaborated on the issue of substantial harm at the Hearing raising quantitative considerations in respect of the extent of the development as well as wider visual considerations arising from the context of the site in an important transitional location. Many of these matters were referred to in the Council's evidence, albeit in respect of the consideration of the first strand of paragraph 145(g).
6. I am also mindful of the prominent location of the appeal site at the edge of the Green Belt and its contribution to an important transition between the built up area and the open character of the wider Green Belt, as has been referred to in previous decisions in respect of the site and which was apparent on my site visit. Within that context, as a matter of planning judgement, it is not unreasonable to conclude that the appeal proposal could result in substantial harm to the openness of the Green Belt.
  7. Whilst I have disagreed with the Council in respect of whether the harm would be substantial, I do not consider that the Council's consideration of this matter was so without foundation or substantiation as to represent unreasonable behaviour.
  8. With regards to **paragraph 145(f)** of the Framework, this refers to limited affordable housing for local community needs under policies set out in the development plan. The fifth bullet point of **Policy 49** of the Local Plan also refers to the construction of limited affordable housing for local community needs in the Green Belt, under policies set out in the Local Plan.
  9. However, the Council states that the Local Plan does not contain policies which allow for the provision of affordable housing in the Green Belt, such as rural exception sites. The fifth bullet point of Policy 49 therefore appears to be somewhat of a 'dead end'. Nevertheless, the exception at paragraph 145(f) of the Framework is explicitly based on "policies set out in the development plan" and if the relevant development plan policy is of no practical effect in respect of the appeal proposal then this would mean that the exception at 145(f) is not engaged. Whilst that may not have been the intention, when read objectively that is what the Policy leads to.
  10. The appellants submit that paragraph 145(f) and Policy 49 should be interpreted to apply to locations in the Green Belt which meet the criteria in the policy in respect of the provision of affordable housing on previously developed land to meet a need identified in the plan. However, 145(f) specifically refers to "local community needs". In my view this means a more location specific policy reflecting a localised assessment of housing need, rather than a general policy which applies over the whole of the Green Belt within a local planning authority's area or the Borough as a whole. There was initially some confusion on the Council's behalf at the Hearing on this matter, particularly as to whether 145(f) should be applied on the same basis as 145(g). However the Council's stance on the assessment of local community needs is set out in its statement of case and was eventually clarified at the Hearing.
  11. Reference has been made to Policies 13 and 16 of the Local Plan which relate to the Bromley Common Renewal Area and which could be viewed as locally based policies. However, whilst Policy 13 refers to encouraging a mix of housing tenures this does not explicitly relate to affordable housing and

- therefore does not fall within the remit of 145(f). Policy 16 also makes no reference to affordable housing.
12. Policy 2 of the Local Plan relates to the provision of affordable housing. However, this is a general policy aimed at meeting the needs of the Borough as a whole and does not reflect the 'local community need' emphasis expressed in 145(f).
  13. Drawing the above together, whilst an element of Policy 49 of the Local Plan appears to be of no practical effect, I consider that the Council's consideration of this and the effect of paragraph 145(f) of the Framework was not unreasonable.
  14. With regard to identifying an **affordable housing provider**, the appellants contend that this could have been secured by a condition. However, the Guidance indicates that a negatively worded condition regarding a planning obligation or other agreement is unlikely to be appropriate in the majority of cases. Such a condition may be acceptable in exceptional circumstances, but it has not been demonstrated to me that the circumstances of the appeal proposal are so exceptional as to justify a condition of this nature. Whilst this may only be guidance, the advice is clear and of direct relevance to this proposal.
  15. I am also mindful that the provision of affordable housing is a crucial element of the proposal and is a determinative matter in this appeal. Even allowing for the description of the development, the evidence provided with the planning application indicates only a general intention to provide affordable housing and does not deliver sufficient certainty or transparency on how this would be brought forward. The Council could therefore not rely on this in drafting a condition or deferring its decision so that an undertaking or further evidence could be provided. Furthermore, due to the fundamental importance of the provision of affordable housing to the consideration of the proposal, the onus is on the appellants to provide substantive evidence in support of the planning application.
  16. The appellants refer to planning permissions where a condition has been used to require a scheme for affordable housing. However, I have not been provided with full details of these schemes and so cannot be sure that the circumstances are a direct parallel to the appeal before me, particularly in respect of any exceptional circumstances as indicated in the Guidance and the relative complexity of the development schemes.
  17. Due to the fundamental importance of affordable housing in the consideration of this proposal and the initially limited substantive evidence to support this, I conclude that the Council's approach in respect of its second reason for refusal was appropriate and reasonable.

## **Conclusion**

18. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Even within the context as set out by the appellants in their application for costs and the fact that I have allowed the appeal, I consider that the Council reached its decision on a reasonable basis and has provided substantive evidence in support of its position.

19. For these reasons, and having regard to all other matters raised, an award for costs is not justified.

*David Cross*

INSPECTOR