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## Costs Decision

Site visit made on 20 May 2019

by **Katie McDonald MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> June 2019

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### **Costs application in relation to Appeal Ref: APP/G5180/W/19/3221236 The Chelsfield, 1 Windsor Drive, Orpington BR6 6EY**

- 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 Punch Partnerships (PML) Ltd for a full award of costs against the Council of the London Borough of Bromley.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing building and redevelopment to create a replacement public house and landlord accommodation; A1 convenience store; 10x residential apartments; reconfiguration of the car park and bin/cycle storage.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (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. The aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
3. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
4. The applicants submit that the Council acted unreasonably by failing to adhere to deadlines with no planning related reasons for the non-determination of the application, refusing to enter into discussions with the applicants or take into consideration the amended plans which reduced the height of the scheme. They also contend that the Council prolonged the proceedings by introducing a new reason for refusal with regard to the sequential test. They lastly set out that the number of reasons for refusal raised are not justified nor supported by appropriate evidence.
5. The PPG<sup>1</sup> advises that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision

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<sup>1</sup> Paragraph: 048 Reference ID: 16-048-20140306 Revision date: 06 03 2014

- within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
6. Furthermore, local planning authorities should have constructive discussions with applicants and, if it has any concerns, give the applicants the opportunity to amend the application before it is decided. On the other hand, the National Planning Policy Framework encourages early engagement, detailing it has significant potential to improve the efficiency and effectiveness of the planning application system for all parties.
  7. The responses the applicants received from the Council during its assessment of the planning application set out that it had concerns with the proposal. It also gave the applicants a proper explanation why it did not reach a decision within the relevant time limit. Although there are perhaps areas where better communication between parties could have been employed, this behaviour was not unreasonable; nor was there any unnecessary or wasted expense in the appeal process as a result of this.
  8. Moreover, the applicants engaged in no pre-application discussions, which I find to be unusual for a proposal of this type and size. Furthermore, the Council present that it is debatable whether, given the extent of its concerns, the revisions proposed by the applicants could have adequately addressed its objections. Thus, the Council was proceeding to determine the application as submitted; and is not duty bound to consider amendments. Although this caused further frustration to the applicants, this behaviour was also not unreasonable, especially given the lack of early engagement.
  9. The Council explains why permission would not have been granted had the application been determined within the relevant period both robustly and clearly. The evidence presented is compelling, which is demonstrated by my findings on most of the main issues in the Appeal Decision. In terms of waste management, the solution for a waste management plan by condition is acceptable, but the Council's reasons for not accepting this are not unreasonable or unfounded. The Council provide sufficient evidence to demonstrate why it considers The Chelsfield to be a non-designated heritage asset, and indeed I agree with its evidence. Lastly, the Council did not have a planning obligation before it when it presented evidence in relation to affordable housing.
  10. The additional reason for refusal in the Council's statement did come as a surprise to the applicants following the details presented in the Officer Report. However, in non-determination appeals, the Council's first presentation of evidence would normally be its statement. Therefore, whilst it was a late additional reason in relation to the details previously presented, the applicants were provided with the opportunity to respond in their final comments. This did not prolong the proceedings and this behaviour was not unreasonable.
  11. The appeal could not have been avoided and the Council did not prevent or delay development which should clearly have been permitted. Consequently, the Council did not behave unreasonably with regard to the costs regime, and the application for an award of costs is refused.

*Katie McDonald*

INSPECTOR