The Planning Inspectorate

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Your Ref:

Our Ref: APP/R5510/W/22/3295076

Date: 25 April 2023

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 & 322; LOCAL GOVERNMENT ACT 1972 - SECTION 250(5). Land off Hayes End Road, Hayes, UB4 8EH: APPEAL BY Bugler Homes Ltd: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for the Department for Levelling Up, Housing and Communities to refer to the Planning Inspectorate's correspondence of 12 May 2022 confirming the withdrawal of the above appeal. The appeal was against the decision of Hillingdon Council to refuse planning permission for: *Demolition of existing buildings and redevelopment of the site to provide a building of 4 storeys to provide residential units (Use Class C3) with associated residential amenity space, landscaping, car and cycle parking, refuse storage and access*.

2. The Council's application for a partial award of costs against the Appellant was made on 12 May, with its final submission on 24 June 2022. Alun Evans, Director, ROK Planning responded on behalf of the Appellant on 22 June 2022.

Summary of decision

3. The application succeeds to the extent that a partial award of costs will be made. The formal Decision and Costs Order are set out below.

Basis for dealing with the costs application

4. In planning appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party, irrespective of procedural method, where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result. The application for costs has been considered in the light of the relevant part of the Government's Planning Practice Guidance (PPG), the appeal papers, the parties' written costs correspondence and all the relevant circumstances.

5. The Inspectorate's Start letters of 1 April 2022 set out a timetable for the submission of documents. The letters warned that withdrawal at any stage in the proceedings, without good reason, may result in a successful application for costs. It directed the Appellant to the Costs guidance on the gov.uk website.

6. Paragraph 054 of the PPG explains that Appellants are encouraged to withdraw their appeal at the earliest opportunity if there is good reason to do so. The Secretary of State has to decide whether the Appellant had good reason for the withdrawal due to a material change in circumstances relevant to the planning issues arising on the appeal, and, if so, whether it was withdrawn promptly.

7. The appeal has been withdrawn and so the issues remain unresolved. Therefore, it is not possible to assess the reasonableness of either party's case on appeal and the Secretary of State has no further jurisdiction in the matter. The decisive issue is considered to be whether or not the Appellant acted unreasonably by not withdrawing the appeal sooner, with the result that the Council incurred wasted or unnecessary expense.

Conclusions

8. The sequence of events leading to the withdrawal of the appeal has been carefully examined. The appeal was dated 17 March 2022. The deadline for the Council's statement was extended until 20 May 2022, which was also the original date for final comments. Viability was a matter of disagreement. The Appellant submitted a financial viability assessment with its appeal submission, including an updated existing use valuation. On 29 April 2022 the Council requested detailed copies of two leases[1] which it saw as important to its review of the viability evidence[2]. Its viability consultant was due to submit its report to the Council on 13 May, ahead of the extended deadline. The appeal was withdrawn on 11 May 2022. As a result, the Council claimed that its viability consultant had substantially completed its draft report. A copy of the consultant's draft report, dated 13 May, was attached to the application for costs. The Appellant has argued that the leases were summarised in its valuation report and that access was arranged as soon as possible.

9. It is noted that the appeal was withdrawn at a very late stage and without warning. Given the repeated requests for lease details, and that the parties met at the site visit, the Appellant would have known that the Council had employed a consultant, who was looking closely at the condition of the buildings, and that this would ordinarily have been detailed in the leases. It was therefore aware of the Council's ongoing commitment to this expense. Consequently, the Secretary of State finds that the late withdrawal of the appeal without justification was unreasonable. Furthermore, this behaviour caused the Council expense which it might otherwise have avoided.

10. The Secretary of State therefore concludes that the Appellant acted unreasonably in withdrawing the appeal when it did. Their actions caused the Council to incur wasted expense in commissioning a further report in order to respond to the appeal, which was subsequently withdrawn. A partial award of costs will therefore be made.

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[1] The Council has set out how new tenants (with new leases) were found between the application and the appeal. It anticipated that these leases would have contained a schedule of the condition of these units. The condition of the units was central to the Council's case and the draft response prepared by its viability consultants reflected this lack of information, citing that this made the assessment more difficult.

[2] The Council's timeline sets out that it repeated this request on 3 May, at a site visit with the Council's viability consultant on 5 May, and yet again on 10 May 2022.

11. Given the timeline of events, the Secretary of State finds that the unnecessary expense was that incurred between the first request for leases, when the Appellant should have realised that the Council was commissioning further work, and the withdrawal of the appeal. For the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling him to award to a party the costs necessarily and reasonably incurred in relation to the appeal proceedings before him. He does not determine the amount payable. That will be for the parties to resolve by agreement on the evidence of expense actually incurred.

FORMAL DECISION

12. For these reasons, the Secretary of State concludes that the Appellant acted unreasonably and caused the Council to incur wasted or unnecessary expense as a result. A partial award of costs is therefore justified.

COSTS ORDER

13. Accordingly, the Secretary of State for the Department of Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, sections 78 and 322 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, **HEREBY ORDERS** that Bugler Homes Ltd shall pay to Hillingdon Council its costs for the abortive appeal proceedings, limited to those costs incurred from 29 April 2022; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The Council is now invited to submit to Alun Evans, Director, ROK Planning on behalf of the Appellant, details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to him.

Yours faithfully

David Nicholson

DAVID NICHOLSON
Authorised by the Secretary of State
to sign on his behalf