



**Department for Levelling Up,
Housing & Communities**

4 November 2021

Richard Holland
Associate
Rivington Street Studio
28 Navigation Road
London
E3 3TG

Our Ref: APP/M5450/W/18/3208434

Dear Sir

**LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPEAL BY THE KEEPERS AND GOVERNORS OF THE FREE GRAMMAR
SCHOOL OF JOHN LYON (HARROW SCHOOL)
AT HARROW SCHOOL, 5 HIGH STREET, HARROW, HA1 3HP
APPLICATION REF: P/1940/1**

APPLICATION FOR A FULL/PARTIAL AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying you of his decision on the above named appeal.
2. This letter deals with The Keepers and Governors of the Free Grammar School of John Lyon (Harrow School) application for a full and, in the alternative, partial award of costs against the Mayor of London. This is in response to the challenge to the substantive decision of 31 October 2019 which the High Court rejected and which as a decision stands. However, in respect of the challenge to the Costs decision, the Court concluded that the decision was flawed, there being gaps in the reasoning within the Inspector's Costs Report (ICR) upon which the Secretary of State had relied. The internal contradictions and legal errors in the ICR were fundamental to the recommendation that a 'full award' of costs be made and the Secretary of State's decision to accept that conclusion. As a result, the decision of the Secretary of State on Costs was quashed by the High Court on 12 May 2020. The application as submitted and the response of the Mayor of London are recorded in the Inspector's Redetermined Costs Report (CR), a copy of which is enclosed.

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3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Redetermined Costs Report, the parties' submissions on the redetermination of the costs decision, the inquiry papers and all the relevant circumstances.
4. The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR59-110.
5. For the reasons given in respect of Ground 1 (CR62-73) and Ground 4 (CR101-103), the Secretary of State agrees with the Inspector that the decision to refuse planning permission was appropriately taken in terms of procedure and of the decision-making, including the weighing of the planning balance, and as such this appeal was inevitable. He further agrees that a full award of costs is not justified there being legitimate issues which required to be examined at appeal and reported upon to the Secretary of State for his determination (CR104).
6. For the reasons given in respect of Ground 3 (CR87-100), the Secretary of State agrees with the Inspector's conclusion that there would have been no additional costs to the applicant in addressing these issues as they were considerations which the decision-maker would need to address in any case, so there was no wasted expense in relation to this ground (CR107).
7. For the reasons given in respect of Ground 2 (CR74-86 and CR106) the Secretary of State agrees with the Inspector that it was necessary for the Applicant to produce a robust refutation of the other potential sites within the School's ownership where the degree of harm to the Metropolitan Open Land could vary to that of the appeal proposal. The additional expense of producing such evidence in the intensity of the Inquiry timetabling/programming, engaging professional witnesses to appear at the Inquiry and the Inquiry time taken to examine such alternatives was the result of the unreasonable behaviour of the Mayor in this regard (CR106).
8. Therefore, having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in her report and accepts her recommendations. Accordingly, he has decided that a partial award of costs, as specified by the Inspector at paragraph CR108-109 is warranted on grounds of unreasonable behaviour on the part of the Mayor of London.
9. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that the Mayor of London shall pay to The Keepers And Governors Of The Free Grammar School Of John Lyon (Harrow School) its partial costs of the Inquiry proceedings limited to ground 2 only, such costs to be taxed in default of agreement as to the amount thereof.
10. You are invited to submit to the Mayor of London details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be

settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at <http://tinyurl.com/ja46o7n>

Right to challenge the decision

11. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.
12. A copy of this letter has been sent to the Mayor of London.

Yours faithfully,

Phil Barber

This decision was made by the Minister of State for Housing on behalf of the Secretary of State and signed on his behalf.