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## Costs Decision

Inquiry opened on 1 March 2022

Site visit made on 4 March 2022

**by David Prentis BA BPI MRTPI**

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

**Decision date: 30<sup>th</sup> March 2022**

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### **Costs application in relation to Appeal Ref: APP/Q5300/W/21/3276466 Car park adjacent to Arnos Grove Station, Bowes Road, Southgate, London N11 1AN**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Connected Living London (Arnos Grove) Limited for a full award of costs against the Council of the London Borough of Enfield.
  - The Inquiry was in connection with an appeal against the refusal of planning permission for erection of 4No buildings between one to seven storeys above ground level, with some elements at lower ground floor level, comprising 162 residential units (Class C3) and flexible use ground floor units (Class A1/A3/A4) together with areas of public realm, hard and soft landscaping, access and servicing arrangements, plant and associated works.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

#### **The submissions for Connected Living London (Arnos Grove) Limited**

2. National Planning Practice Guidance (the Guidance) provides the most up to date advice in relation to cost applications. The aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way. In particular, the Guidance aims to:

*"...encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay..."*

3. The Guidance includes examples of unreasonable behaviour by a local planning authority in relation to the substance of an appeal. The appellant relies on the following examples:
  - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
  - failure to produce evidence to substantiate each reason for refusal on appeal; and

- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant contends that this is the clearest example of a local planning authority preventing development which should reasonably have been permitted, having regard to the development plan and all other material considerations available at the date of the refusal. The Council now accepts that the appeal scheme accords with the development plan and the National Planning Policy Framework (the Framework). The Statement of Common ground includes the following agreed statement:

*"The Appeal Scheme accords with both the development plan as a whole as well as other weighty material considerations including the NPPF. Accordingly, planning permission should be granted without delay in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 11 of the NPPF."*
  5. The Council does not now resist the grant of planning permission, subject to appropriate planning conditions and planning obligations. As a result, it has failed to call any evidence to substantiate its reasons for refusal, contrary to the Guidance. This failure is neither reasonable nor justified. It is now accepted by the Council that it would have been unreasonable to seek to defend the reasons for refusal as of August/September 2021. It was equally unreasonable to issue a refusal of permission in March 2021.
  6. The Council's letter to the Planning Inspectorate, indicating that it would no longer be defending the reasons for refusal, asserted that there had been key changes in circumstances since the resolution to refuse the application on 5 January 2021. This was factually misconceived.
  7. The Council cannot reasonably rely on publication of the Housing Delivery Test 2020 Measurement (HDT) and the operation of the tilted balance. The HDT was published on 17 January 2021, well before the refusal of planning permission on 19 March 2021. Moreover, the Council now accepts that the reason for refusal relating to the Grade II\* listed Arnos Grove Station is indefensible. That change of position cannot logically depend on the tilted balance being in play because, if there was harm to a designated heritage asset, the tilted balance would be disengaged<sup>1</sup>.
  8. The Council had a statutory duty to notify the Mayor of its potential refusal. The Deputy Mayor for Planning, Regeneration and Skills decided that there were no reasons for the Mayor to intervene and take over determination of the application. However, the Deputy Mayor's letter of 8 March 2021 expressed disappointment with the Council's intended refusal in the following terms:

*"However, I am extremely disappointed that Enfield Council has refused this high quality and sensitively designed development. I note that the Council has consistently failed to meet its housing targets over the past five years, which makes this decision to refuse this housing that would meet the needs of London's renters and provide affordable housing all the more surprising. I am also concerned that the Council has ignored the carefully considered views of its own planning officers in relation to the proposed removal of existing car*

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<sup>1</sup> The Framework, footnote 8

*parking, which is vital if we are to reduce dependence on the car, improve air quality and address the climate emergency”.*

This response was received well before the refusal of planning permission.

9. The Council argues that the publication of the London Plan 2021 (LP21) was one of the key changes in circumstances. However, the LP21 was published on 2 March 2021, well before the refusal of planning permission. Moreover, the officer’s report to the Committee meeting advised that the London Plan (Intend to Publish version) could be given substantial weight because it had been subject to a full examination and was close to adoption. Further, the Council relied on Policies GG4, H6, H10 and H11 of that very plan in its reasons for refusal. The Council must have considered the policies of the London Plan when issuing its reasons for refusal. These policies were not materially changed in the LP21.

10. A decision-maker is required to have regard to changes in circumstances which might be capable of altering a decision right up until a decision is issued<sup>2</sup>. Moreover, the Planning Inspectorate’s procedural guidance<sup>3</sup> states that:

*“When refusing an application, the local planning authority should consider carefully whether it has a sufficiently strong case, capable of being argued at appeal, on the basis of the material before it”. (underlining added)*

If the Council is right that the matters referred to above were key changes that fundamentally changed its decision, then, applying the Court’s approach in *Kides* and the procedural guidance, the Council should have reconsidered its decision in March, before it issued its decision notice. Indeed, if there was truly a prospect of these factors changing the outcome, the Council had a duty to reconsider. Instead, the Council pressed ahead to an unreasonable refusal. It only relied on these changes later on, after the appeal had been lodged, to state that continuing to defend the appeal would be unreasonable.

11. The Council’s letter to the Planning Inspectorate included the following:

*“Related to both (i) and (ii), since 5 January 2021, the situation regarding delivery of housing in Enfield Borough to meet identified local needs has changed, informed in part by the Council’s recent decision on 8 July 2021 to approve the Regulation 18 draft Enfield Local Plan for public consultation, together with the evidence base informing the preparation of the emerging Local Plan”*

12. This is an amorphous assertion, with no detail as to timing or substance. There is no evidence that the housing situation changed between January and September 2021, such as to warrant a fundamental change in position. The presumption set out in the Framework was already in place in January. Although the Council published a Regulation 18 draft of the emerging local plan in July, this was only the first formal consultation and only limited weight could reasonably be attached to it. No part of the evidence base is specifically relied on as a key change in circumstances.
13. With regard to the Council’s response to the costs application, the stated reasons for failing to produce any evidence in support of the reasons for refusal

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<sup>2</sup> *Kides v South Cambridgeshire District Council* [2002] EWCA Civ 1370

<sup>3</sup> Procedural Guide, Planning Appeals – England (March 2021), paragraph 1.2.2

are that it would have been unreasonable to defend those reasons as of 7 September 2021. The question for the decision-maker is whether that unreasonableness crystallised only on that date. It did not. The Committee's acceptance that it would not be reasonable to defend the appeal was as valid in January and March as it was in September. All of the operative changes which could have had a meaningful effect on the Council's decision pre-date the refusal.

14. Seeking a judicial review, as suggested in the costs response, would have resulted in delay and expense and in any event would not have secured the grant of planning permission for much-needed housing. Moreover, the Courts would have been unlikely to entertain such a challenge given the statutory right of appeal.
15. It is the date of refusal that is relevant, not the date of the Committee resolution. This is particularly so in a case, such as this, where the Council could not issue a decision before it had received the Mayor's Stage 2 report. The fact that the Mayor did not find the case to be strategically important enough for him to determine is beside the point. The Mayor's rebuke, quoted above, was a fundamental material consideration that pre-dated the refusal.
16. It is not for the appellant to prove that further Committee consideration of the changed circumstances in March would have made a difference because it was expressly accepted in August/September that they did make a difference, causing the Council to abandon all reasons for refusal.
17. The Council relies on the appellant's letter of 14 May 2021 as demonstrating that the appellant accepted that the second reason for refusal (heritage) was reasonable. However, that letter made clear that:

*"We do not accept that any of the reasons of refusal is defensible in policy terms and we will be making strong submissions to this effect at appeal. We are particularly concerned about the first and third reasons for refusal and, for the reasons set out below, we formally invite the Council to withdraw them in order to save inquiry time and avoid the parties incurring further unnecessary expense".* (underlining added)

There is no doubt that the appellant was taking issue with the entire policy basis upon which the Council had refused planning permission.

18. The Council's suggestion that the appellant did not prove that officers were duty bound to report back to the Committee in March misses the point and does not acknowledge the Court's approach in *Kides*. This was a matter for the Council, not the appellant. In any event, it has no bearing on the reasonableness of the refusal.
19. There can be no reasonable complaint about the timing of the costs application. It was made at the end of the Inquiry in accordance with standard practice and procedure. Moreover, the timing of the application has no bearing on the reasonableness of the refusal. The appellant's position remains, as stated at the Inquiry, that the costs application was not meant to criticise the conduct of legal or planning officers of the Council at the Inquiry.
20. In conclusion, the changes in circumstances relied upon by the Council do not withstand scrutiny. To the contrary, they highlight the unreasonableness, as of the date of the refusal, of the Council's decision. The appellant submits that the

Council has acted unreasonably in relation to the substance of the appeal. This appeal would not have been necessary, had the Council properly determined the appeal scheme in accordance with the development plan and all material considerations at the date of the refusal.

21. This is now belatedly acknowledged by the Council, only after an appeal has been made necessary. Nevertheless, the appellant has incurred considerable expense in pursuing the appeal. This expense has been incurred as a direct consequence of the Council's unreasonable behaviour. Accordingly, the appellant respectfully seeks an order that a full award of costs be made against the Council.

### **The response by the Council of the London Borough of Enfield**

22. The Guidance sets out the Secretary of State's policy on awards of costs. The general rule is that each main party to an appeal bears its own costs, save where it can be demonstrated by the party making an application for costs that it has incurred unnecessary or wasted expenditure, which has been directly caused by the other party's unreasonable behaviour.
23. The onus of proof is on the party applying for a costs award who must demonstrate that the requirements for making an award have been satisfied. The Council invites the Inspector to dismiss the application on the basis that it fails to disclose any proper basis for making a costs award. The Council denies that it has behaved unreasonably. The Council also denies that the appellant has incurred unnecessary or wasted expense in the appeal process.
24. The behaviour alleged to be unreasonable is the Council's decision to refuse planning permission by its decision notice dated 19 March 2021. The appellant asserts that the application should reasonably have been permitted and that the decision to refuse planning permission was unreasonable as of the date of refusal. The application does not assert that the Planning Committee's resolution on 5 January 2021 amounted to unreasonable behaviour, nor does the appellant criticise the Committee's consideration of the application or its decision.
25. As the application asserts unreasonable behaviour on substantive grounds, the appellant must prove that the Council knew, or ought to have known, that refusing planning permission for the reasons identified by the Committee on 5 January 2021 would constitute unreasonable behaviour having regard to the facts and circumstances as they existed on 19 March 2021. The appellant's contention that the Council should have reconsidered the application in March falls short of demonstrating that the Planning Committee would have resolved to grant planning permission had there been a further report on material changes in circumstances.
26. The appellant has not attempted to prove that officers were duty bound to report back to the Committee, advising that it would be unreasonable to refuse planning permission, on receipt of the GLA's Stage 2 response and the Deputy Mayor's covering letter. Nor does the appellant assert that it would have been unreasonable for the Committee to decide not to accept such a recommendation.
27. The Council submits that the application for costs should be dismissed because the appellant has not attempted to prove that the appeal would not have been

necessary, had the Council reconsidered the application. In support of that submission:

- a) The application misrepresents the Council's reasons for deciding not to defend its reasons for refusal as set out in its letter dated 7 September 2021.
- b) Those reasons demonstrate that the Planning Committee had regard to all relevant considerations as of 31 August 2021, which included the appellant's Statement of Case and the draft Statement of Common Ground, both of which relied upon material changes in circumstances that post-dated the Council's refusal of planning permission on 19 March 2021.
- c) The Committee also had regard to the appellant's letter of 14 May 2021<sup>4</sup> (the 14 May letter), inviting the Council to withdraw its first and third reasons for refusal, to narrow the issues in dispute, and reserving the appellant's position in costs. The appellant's failure to refer to its own letter concerning costs is a serious omission because the content of that letter is germane to consideration of the application for costs.
- d) The 14 May letter confirms the fundamental and fatal flaw in the application because it proves that the appellant did not consider the refusal of planning permission to be unreasonable.
- e) The 14 May letter requested that the Council withdraw its first and third reasons for refusal only. The appellant did not assert that the second reason for refusal (heritage) was wholly without merit, or that the Committee's exercise of planning judgement was unreasonable. The appellant sought to narrow the issues in dispute.
- f) The 14 May letter was the first time the appellant wrote to the Council concerning the reasons for refusal and costs. The letter referred to the Deputy Mayor's letter of 8 March 2021, stating only that it was "*cognisant of the recent response ...*", without further comment.
- g) Having taken over two months to write to the Council in those terms, the appellant cannot rely upon a counter-factual argument that is wholly inconsistent with its own contemporaneous evidential record.
- h) The appellant's reliance upon the decision of Court of Appeal in *Kides* demonstrates that it cannot prove that reporting the application back to the Planning Committee would have avoided an appeal.
- i) The appellant cannot have it both ways. If officers were duty bound to refer the application back to the Committee, failure to do so amounted to an error of law. On the appellant's own case, it could have avoided the expense of an appeal by writing to the Council demanding that the application be referred back to the Committee.
- j) The appellant could have threatened to apply for judicial review to compel the Council to refer the application to the Committee and an

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<sup>4</sup> The appellant's letter of 14 May 2021 was appended to the Council's response to the costs application (ID12)

interim injunction to restrain the Council from issuing a decision notice.

- k) The appellant could have challenged the lawfulness of the decision by officers to issue the decision notice on 19 March 2021. If it genuinely considered that the failure to refer back to committee was unlawful, it should have applied for judicial review, relying upon the contention that a section 78 appeal would not afford an adequate alternative remedy. No such application was made to avoid the expense of an appeal.

28. For all these reasons, the Council submits that the application for costs should be dismissed on the grounds that it fails to disclose any proper basis for making the costs order sought. Without prejudice to that primary submission, the Council denies that it has behaved unreasonably. It was reasonable to refuse planning permission, having regard to the following:

- a) The 14 May letter shows that it was not unreasonable for the Council to refuse planning permission.
- b) As the Mayor of London declined to exercise his powers to determine the application himself, it was reasonable for the Council to give effect to the decision of elected members.
- c) The Council could not determine the planning application without first referring it to the GLA. In the event, the Mayor published the LP21 whilst the GLA was considering the Stage 2 referral. The GLA and Deputy Mayor had regard to the development plan, including the LP21, when considering whether to exercise the Mayor's statutory powers to determine the application.
- d) The Deputy Mayor did not suggest that the application should be referred back to the Committee to reconsider the reasons for refusal. He did not consider it necessary, reasonable, or appropriate to ask elected Members to reverse their decision.
- e) Given the appellant's status as part of the 'Mayoral family', the reasonableness of the Council's refusal must be considered in the context of the Mayor's decision, declining to use his statutory powers to facilitate the prompt delivery of the appeal development without incurring the costs of an appeal.
- f) In any event, as of 19 March 2021, the circumstances justifying the Council's decision not to defend its reasons for refusal did not exist.
- g) On 31 August 2021 the Committee was advised by officers that it would not be reasonable to defend the appeal for the reasons explained in the Council's opening remarks. The Committee's decision took full and proper account of all relevant considerations at that time. At no stage was the Committee advised by officers that that it was unreasonable to refuse planning permission in March 2021.
- h) If the appellant genuinely believed that the planning application was not properly determined, why did it wait until the closing minutes of the Inquiry to make that allegation in an application for costs

intimated for the first time after the appellant closed its evidential case?

- i) The appellant should not be rewarded for denying the Council the opportunity to address the allegation of unreasonable behaviour at a much earlier stage to minimise exposure to risks and protect the public interest generally.
29. For the same reasons, the Council denies that the appellant has incurred unnecessary or wasted expense in the appeal process.
30. In conclusion, the application is not supported by any credible evidence. In closing, the appellant assured the Inspector that the application for costs was limited to the refusal of planning permission on 19 March 2021. The appellant did not seek to criticise the actions of Council officers or the Council's conduct in the appeal.
31. Those oral submissions acknowledged the conscientious, collaborative and co-operative manner in which the Council's officers have carried out their duties under extreme pressure and with limited resources during the COVID-19 pandemic. The day after the Committee meeting on 5 January 2021, the UK went into lockdown with stay at home orders remaining in place for over four months.
32. If the conduct of the Council's officers should not be criticised, the application for costs fails. The appellant has never suggested that the officers behaved unreasonably by not referring the application back to the Committee and issuing the decision notice in March 2021, giving effect to decisions of the democratically elected Councillors and the Mayor of London. It is unreasonable for the appellant to assert otherwise now. The 14 May letter also undermines the application for costs.
33. The Council calls upon the appellant to withdraw its application for costs. Should the appellant persist, the Council invites the Inspector to dismiss the application for the reasons given above.

## **Reasons**

34. Planning Practice Guidance (the Guidance) states that parties in planning appeals normally meet their own expenses. Costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expenditure in the appeal process.
35. The Council resolved to refuse the planning application on 5 January 2021. Following reference to the Mayor of London, and receipt of the Mayor's Stage 2 response, the Council's decision notice was issued on 19 March 2021. There were three reasons for refusal, relating to loss of the existing station car park, the setting of the Grade II\* listed Arnos Grove Station and the proposed housing mix, including the provision for affordable and family housing.
36. Following a further meeting on 31 August 2021, the Council wrote to the Planning Inspectorate on 7 September 2021 advising that it would not be defending these reasons for refusal at the Inquiry. That letter included the following:

*"In the event, with the benefit of further advice from Counsel, very reluctantly Officers concluded that this was one of those rare cases where, exceptionally, it would not be reasonable for the LPA to defend its reasons for refusal. For the avoidance of doubt, but for the significant material changes in circumstances identified above, Officers would not have advised the Planning Committee that it would be unreasonable to defend the LPA's reason for refusal."*

The letter concluded that:

*"Accordingly, the LPA does not resist the grant of planning permission subject to appropriate planning conditions and the conclusion of a section 106 planning obligation, the terms of which the LPA will endeavour to agree with the appellant."*

37. The Council's position at the Inquiry, consistent with that letter and confirmed in the Statement of Common Ground, was that planning permission should be granted. At the Inquiry, the Council stated that its decision not to defend the reasons for refusal was informed by *"key changes in circumstances"*, which may be summarised as:
- the Housing Delivery Test results for 2020;
  - the formal publication of the London Plan 2021;
  - the Stage 2 referral response of the Greater London Authority (GLA), together with the Deputy Mayor's covering letter; and
  - the situation relating to housing delivery in Enfield, informed by the decision to approve the draft Enfield Local Plan for consultation.
38. The Guidance sets out some examples of unreasonable behaviour by local planning authorities in relation to the substance of an appeal. These include failure to produce evidence to substantiate each reason for refusal. In this case no evidence to substantiate any of the reasons for refusal was ever produced because the Council decided that it would be unreasonable to defend them before it got as far as submitting its statement of case.
39. The Council contends that its decision not to defend the reasons for refusal was because of significant changes of circumstances. When considering a planning application, a planning authority is required to have regard to all material considerations. In the case of *Kides*, the Court of Appeal found that:
- "In my judgment, an authority's duty to "have regard to" material considerations is not to be elevated into a formal requirement that in every case where a new material consideration arises after the passing of a resolution (in principle) to grant planning permission but before the issue of the decision notice there has to be a specific referral of the application back to committee. In my judgment the duty is discharged if, as at the date at which the decision notice is issued, the authority has considered all material considerations affecting the application, and has done so with the application in mind - albeit that the application was not specifically placed before it for reconsideration"*<sup>5</sup>.
40. The judgment makes clear that the duty needs to be discharged at the date on which the decision notice is issued. In this case, that was on 19 March 2021. The Council's response to the costs application did not dispute the appellant's

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<sup>5</sup> *Kides v South Cambridgeshire District Council* [2002] EWCA Civ 1370, paragraph 122

submission that it is the circumstances at that date that need to be considered when assessing whether there was or was not a material change in circumstances between the decision on the application and the decision not to defend the appeal.

41. This is an important point because three of the four changes in circumstances that the Council relies on happened before 19 March 2021:

- the Housing Delivery Test results for 2020 were published on 17 January 2021;
- the formal publication of the London Plan 2021 was on 2 March 2021; and
- the Stage 2 referral response of the Greater London Authority, together with the Deputy Mayor's covering letter, were both dated 8 March 2021.

All of these matters were known to the Council when it issued the decision notice, so they cannot reasonably be regarded as changes in circumstances justifying the decision not to defend the appeal.

42. The fourth change in circumstances relied on by the Council, which is quoted in full above, relates to the "*situation relating to housing delivery*" in Enfield, informed by the decision to approve the draft Enfield Local Plan for consultation on 8 July 2021. In my view this is a vague and generalised assertion of a change in circumstances. The Council did not point to any more specific factors, under this general heading, that might justify its changed stance on the appeal. In my appeal decision I have noted that:

- Enfield remains a "*presumption authority*", having delivered 67% of its housing target over the last three years.
- The Council's Strategic Housing Market Assessment identified a need for 456 affordable dwellings per year. Delivery of 370 affordable dwellings in total over the three years 2016/17 to 2018/19 amounted to only 27% of the need. In 2018/19 just 61 affordable homes were delivered across the borough.
- The Council and the appellant agree that there is a borough-wide need for all types, tenures, and sizes of housing in Enfield. The housing target set by LP21 for Enfield is a minimum of 12,460 homes over the next 10 years.

43. The situation relating to housing delivery in Enfield is poor and has been so for some time. However, there was no evidence before the Inquiry that the situation changed significantly in the period between March 2021 and September 2021.

44. Consultation has begun on the Regulation 18 "*Main Issues and Preferred Approaches*" for a new Enfield Local Plan. In my appeal decision I have agreed with the Council and the appellant that limited weight should be attached to the emerging plan at this early stage. In those circumstances, the emerging plan cannot logically amount to a significant change in circumstances, such as to justify the Council's decision not to defend the appeal.

45. In summary, the Council did not produce any evidence in relation to the reasons for refusal. This was said to be due to changes in circumstances. Of the four changes relied on, three happened before the Council's decision was issued. The fourth was expressed in a vague and generalised way. To my mind it does not represent a credible reason for deciding not to defend the appeal.

*The letter of 14 May 2021*

46. The Council contends that the 14 May letter amounted to an acceptance by the appellant that the second reason for refusal, relating to the Grade II\* listed station, was reasonable. I do not read the letter in that way, having regard to the context in which it was written. At that time the appellant was, reasonably, seeking to narrow the grounds of an appeal it had yet to make. It could not have known whether or not the Council was going to call expert evidence which might have substantiated the second reason for refusal. In my view, the express references to unreasonableness in respect of the first and third reasons for refusal do not amount to a tacit acceptance of reasonableness in respect of the second reason for refusal. As matters turned out, no evidence was ever adduced in respect of the second reason for refusal.

*The decision-making process in March 2021*

47. The Council suggests that, on the appellant's approach, the failure to report back to the Committee in March resulted in an unlawful decision-making process. It is also suggested that the appellant could have initiated a judicial review, either to compel a report back or to challenge the lawfulness of the decision. Building on those contentions, it is argued that the appellant should have taken that course of action to avoid the expense of an appeal.
48. It is not for me to say whether the Council's decision-making process in March 2021 was lawful. That could have been determined by a Court, had there been an application for judicial review, but there was not. Conjecture about what the outcome of a judicial review might have been has no bearing on the merits of this costs application. The appellant received a planning decision which, in its opinion, was not justified on the planning merits. In those circumstances, the submission of a planning appeal was the obvious procedural route to follow. The right of appeal is the opportunity provided by statute. Moreover, it provides the most direct route to the outcome a disappointed applicant is most likely to be seeking, which is the grant of planning permission. There was no obligation on the appellant to follow a judicial route in preference to exercising its right of appeal.
49. The Council submits that the appellant has not attempted to prove that the appeal would not have been necessary, had the Council reconsidered the application. However, it cannot be known what would have happened if such a report had been made. In my assessment it is not necessary to speculate on what the outcome might have been if events had unfolded in a different way. The main focus, for this costs decision, is the Council's behaviour in relation to the substance of the case.

*The response of the Deputy Mayor*

50. The Council was obliged to refer the application to the Mayor before the decision could be issued. It is clear from the Stage 2 report, and the Deputy Mayor's covering letter, that the Deputy Mayor strongly disagreed with the

Council's intention to refuse the application. Even so, the Deputy Mayor did not consider that the application met the criteria for the Mayor to determine it himself. Whilst that procedural decision enabled the Council to determine the application as it saw fit, it cannot be seen as bolstering the reasonableness of the Council's intended decision. Nothing can be inferred from the fact that the Deputy Mayor did not tell the Council how to determine the application. The Deputy Mayor expressed a strong view on the planning merits but the Council was the determining authority. The Deputy Mayor's response does not assist the Council's response to the costs application.

#### *The timing of the costs application*

51. The Guidance advises that:

*"All costs applications must be formally made to the Inspector before the hearing or inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry. Any such application must be brought to the Inspector's attention at the hearing or inquiry and can be added to or amended as necessary in oral submissions."*

52. The application for costs was made on the last day of the Inquiry. Whilst it might have been helpful to the Council if it had been made sooner, that is a matter of good practice rather than a procedural requirement. The Council asked for, and was given, an opportunity to respond in writing after the Inquiry had closed. The Council's response was duly submitted in the agreed timescale and the appellant made final comments, also in writing. Consequently, the Council was not disadvantaged by the timing of the application.

#### *Conclusions*

53. The Council did not produce any evidence to substantiate the reasons for refusal. This was said to be due to changes in circumstances. However, of the four changes relied on, three happened before the Council's decision was issued. The fourth was expressed in a vague and generalised way which did not amount to a credible reason for deciding not to defend the appeal.
54. I conclude that the decision to refuse the application, for reasons that were not substantiated, amounted to unreasonable behaviour. This had the effect of delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and other material considerations.
55. The Council's planning and legal officers assisted the appeal process in a timely and professional way, by agreeing a Statement of Common Ground and contributing to the preparation of a s106 Agreement and suggested planning conditions. However, that does not alter my conclusion that this Inquiry was not necessary in the first place.
56. The Council's unreasonable behaviour in refusing the application has directly caused the appellant to incur unnecessary or wasted expenditure in the appeal process. The conditions for a full award of costs have been met.

### **Costs Order**

57. 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 the Council of the London Borough of Enfield shall pay to Connected Living London (Arnos Grove) Limited the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
58. The applicant is now invited to submit to the Council of the London Borough of Enfield, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*David Prentis*

Inspector