



Costs Decision

Inquiry held on 13 and 14 February 2024

Site visit made on 15 February 2024

by Jonathan Bore MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02/04/2024

COSTS DECISION A: application by Merton College, Oxford for a full award of costs against Cherwell District Council in relation to Appeal Ref: APP/C3105/W/23/3329587

- 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 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 the erection of up to 540 dwellings (Class C3), up to 9,000sqm GEA of elderly/extra care residential floorspace (Class C2), a community home work hub (up to 200sqm)(Class E), alongside the creation of two locally equipped areas for play, one NEAP, up to 1.8 hectares of playing pitches and amenity space for the William Fletcher Primary School, two vehicular access points, green infrastructure, areas of public open space, two community woodland areas, a local nature reserve, footpaths, tree planting, restoration of historic hedgerow, and associated works on OS Parcel 3673 adjoining and west of 161 Rutten Lane, Yarnton, OX5 1LT.
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Preliminary matters

1. In addition to the costs application which is the subject of this decision, another costs application was made by Merton College against Oxfordshire County Council. This concerned a request for a strategic infrastructure contribution and access to replacement playing fields for William Fletcher Primary School. This is the subject of Costs Decision B.
2. In this decision Merton College and its consultant team are referred to as "the applicant".

Decision

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

The submissions for Merton College

4. The costs application was submitted in writing.
5. Merton College had entered into a planning performance agreement (PPA) with Cherwell District Council and Oxfordshire County Council on 13 July 2021, and payment of £22,344 was made to the District Council and £48,756 to the County Council. The PPA stated that where unforeseen circumstances meant that the application could not be presented to the District Council's planning committee by April 2022, the agreement would expire. The PPA was not adhered to by either the District or the County Council. No reason was ever provided nor any substantive issues identified.

6. The application was not determined within the statutory deadline, as extended. The Council's handling of the planning application led the applicant to believe that there was no prospect of obtaining planning permission within a reasonable period, so an appeal against the Council's failure to determine the application was made on 15 September 2023.
7. There were several examples of the slowness and lack of engagement in handling the application. Although viability was identified as a potential issue in March 2022, the District Council did not appoint a viability consultant until October 2022; there were no appropriate handover and transition measures to deal with changes in the case officer, team leader and housing officer, and this contributed to significant delays; repeated requests were made for clarity on affordable housing and mix and the appropriate balance between housing and transportation contributions but a formal response was not issued until 9 March 2022; and despite the applicant's repeated monthly requests as to the specification, location and role of the local nature reserve, the District Council did not provide any clarification until the committee report was published in November 2023, after the appeal against non-determination was submitted.
8. Upon notice of the submission of the appeal, the Council argued that an appeal was unnecessary as the Council would be able to grant planning permission at short order; they said that witnesses on architecture and design were not needed and other technical matters on transport, ecology and education could be resolved. However, the report to committee included five putative reasons for refusal, none of which had been adequately discussed with the applicant before the appeal was made or prior to the committee report. The District Council had not sought information on these matters beforehand due to its lack of engagement with the planning application. These matters could have been dealt with by requests for further information and by discussion.
9. During the second appeal case management conference on 31 January 2024 the District Council indicated that the reasons for refusal had been satisfactorily resolved and they did not intend to take an active role in pursuing any of the reasons for refusal at the inquiry, subject to completion of the s106 agreement. This demonstrates that if the Council had engaged properly during the agreed time limit for determining the application, the outstanding issues could have been resolved without the need for the appeal process.
10. Planning Practice Guidance states that if a local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. If an appeal in such cases is allowed the local planning authority may be at risk of an award of costs if there were no substantive reasons to justify delaying the decision and better communication with the applicant would have allowed the appeal to have been avoided altogether. In this case, if the Council had acted reasonably and had determined the application within the agreed statutory deadline the appeal ought not to have been necessary. No explanation has ever been provided as to why a determination was impossible within that timescale.
11. The Council's unreasonable conduct has caused the applicant the unnecessary expense of an appeal and a full award of costs is sought against the Council.

The response by Cherwell District Council

12. The response was made in writing.

13. The costs application is not justified and no award of costs should be made against the Council.
14. Planning Practice Guidance states that as a matter of good practice where circumstances allow, costs applications should be made in writing before the inquiry. In this case the written costs application was left until the very last minute. Arguments of unreasonable behaviour by the Council are absent from the applicant's claim.
15. The Council held a series of monthly meetings involving the case officer the team leader and senior manager. In August 2022 the previous case officer left. Staff turnover is unavoidable, but the case was transferred to the current case officer and she and the team leader were briefed and worked quickly to become familiar with the application. Monthly meetings continued to be held to resolve issues even though the PPA funding had expired. The Council refutes the applicant's assertion that there was a lack of engagement and communication. The second case officer engaged closely with the applicant's team.
16. It was not until February 2022 that the applicant had first identified a viability issue so the issue was not capable of resolution by the time of the expiry of the PPA. The Council's viability consultant was appointed in October 2022. It is recognised that there was delay in appointing a viability consultant, but this had to go through the formal procurement process and did not result in delay the determination of the application. The applicant's first viability assessment was not submitted until 20 January 2023, and there was no reason why the assessment should have waited until the appointment of the Council's consultant.
17. A formal response on affordable housing mix and tenure was provided in March 2022.
18. The Council sent a letter on 22 September 2022 to the applicant's team highlighting the Council's concerns with the informal parkland and biodiversity net gain. In December 2022 the applicant made a revised submission which provided information on a number of issues including transport, biodiversity, design, education, flood risk and drainage issues. This was described as a comprehensive addendum application pack. The date of submission of this material made it impossible to determine the application within the timescale envisaged by the PPA. Consultation took place on this until 20 January 2023.
19. The applicant's archaeology work was submitted in early January 2023. In April 2023 the Council's ecologist raised objections on various matters. A meeting was held in which the applicant confirmed that work was ongoing in respect of viability, ecology and the County Council's objections. On 27 April 2023 a further letter was issued by the Council to summarise the position on design, viability, transport, drainage, ecology, informal parkland and the s106 obligation. Further information on ecology was submitted in May 2023.
20. It was not for the Council to supply a clarification of the Local Plan requirement for a local nature reserve – it was for the applicant to propose a scheme. A letter was provided by the case officer on 25 July 2023 setting out all outstanding matters including design, informal parkland, biodiversity, viability and transport. Work was still ongoing on transport modelling which had been requested by the County Council; the applicant's transport response was

submitted on 6 September 2023 and a further response was submitted on 18 September 2023.

21. The putative reasons for refusal related to matters that the Council had communicated to the applicant's team through the application process and were capable of resolution. There was nothing unreasonable about them and there was no inconsistency between issuing putative reasons for refusal and in stating the issues could be addressed in short order. It was the applicant's decision to appeal against non-determination. It was necessary even during the appeal process for the applicant to take make amendments to the scheme in order to overcome reasonable concerns in relation to its acceptability and participate in joint work to get matters to an acceptable conclusion.
22. It is evident from the putative reasons for refusal that permission would not have been granted even when the appeal was made in September 2023, because there were several issues remaining to be resolved before a grant could have been forthcoming. The scheme amendments made by the applicant thereafter reinforce the point that more was required to meet these legitimate concerns. The amendments may not have been major but they deal with matters that needed to be addressed and have had to be presented across a range of material, including a revised indicative framework plan, a revised land use parameters plan, a revised green infrastructure parameters plan, a new retained agricultural land improvement plan, a revised legacy and stewardship strategy and an updated biodiversity net gain assessment.
23. Moreover, as at the end of March 2023 the objection from Oxfordshire County Council as highway authority still remained and the further transport modelling to be carried jointly by all site promoters first requested by the County Council in June 2022 was yet to be completed. The Council was in no realistic position to grant permission at this point in the face of the highway authority's objection, which was not withdrawn until 13th October 2023 after the appeal had been made.
24. The question of the viability of the development raised by putative reason for refusal (4) was also a matter that needed further work to be done at the point when the appeal was made and effort to be put in by both sides thereafter to reach a position satisfactory to all concerned. Similarly, there was no planning obligation (the subject of putative reason for refusal (5)) available to support the proposals when the appeal was made. This too has involved a good deal of further input to get to the point where the development's impacts have been properly addressed.
25. The Council therefore disputes that there has been any unreasonable behaviour on its part leading the applicant to incur unnecessary or wasted expense in the appeal process.

Reasons

26. Parties in planning appeals normally meet their own expenses. However, the 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.
27. This is a major claim in respect of a significant scheme and it is necessary to go through the issues in some detail. The source for the chronology and detail

includes the PPA meeting notes, emails, correspondence between the main parties, submissions by both main parties, and all the inquiry evidence.

28. To appreciate the context for the discussion referred to below, is important to establish at the outset:

- the planning application was in outline, with all matters reserved except for the principal access points;
- it concerned the development of 540 homes on a site allocated for 540 homes under Policy PR9 of the Cherwell Local Plan 2011-2031 (Part 1) Partial Review Plan 2020;
- the development plan allocation was made to contribute towards meeting the City of Oxford's unmet housing needs;
- the proposal was subject to pre-application discussions;
- the application was dated 8 October 2021 and was validated on 14 October 2021;
- the PPA was dated 13 July 2021 and stated that where unforeseen circumstances meant that the application could not be presented to the Councils' planning committee by April 2022, it would expire on 1 May 2022;
- further extensions of time for determining the application were sought by the Council;
- the applicant appealed against non-determination on 15 September 2023.

29. The putative reasons for refusal provide a useful initial basis for this assessment, followed by conclusions as to whether there was unreasonable behaviour that led to unnecessary expense.

Informal parkland and community woodland, ecology, biodiversity and the local nature reserve

30. The first putative reason for refusal stated that the proposal had failed to adequately demonstrate that the public open space would be delivered in the form of an informal parkland. The second putative reason for refusal stated that the scheme had failed to adequately demonstrate that the development would not impact existing flora and fauna, deliver successful ecological mitigation and biodiversity gain, and deliver the local nature reserve which was a requirement of Policy PR9.

31. The applicant had submitted a very large amount of material to support the planning application, as well as producing a comprehensive environmental statement. The applicant's green and blue infrastructure plan was provided as part of the information attached to the outline application. It was similar to the plan in the original development framework but differed in certain respects because it located the community woodland in two separate parcels; the area for public open space was different from the 24.8 hectares sought by Policy PR9; and the area of public open space was intended to be managed as a meadow with rotational grazing and controlled rather than general public access.

32. There was little indication from the Council, from the submission of the application in 2021 and throughout most of 2022, that the topics covered in these putative reasons for refusal were a matter of significant concern to the Council. Policy PR9 required that the nature reserve had to be accessible to William Fletcher Primary School, so from the pre-application stage onwards, the applicant quite reasonably sought details from the Council and County Council as to its specification, location and role. After the application was submitted, the need for this information was recorded as an outstanding item at every monthly meeting from October 2021 to July 2022, but the information was not forthcoming from either council.
33. However, in a letter to the applicants on 22 September 2022, the District Council raised a great many issues: community woodland, informal parkland, density, design detail, archaeology, landscape and ecology, health impact and sustainable construction. This was over a year from the signing of the PPA and nearly a year from the date the application was submitted. The Council also emailed the applicant in November 2022 in connection with the informal parkland.
34. The applicant responded by letter on 17 October 2022 and submitted an addendum pack in December 2022 which provided information on transport, green infrastructure and biodiversity, design, education, flood risk and drainage issues.
35. On 27 April 2023 the Council wrote to the applicant to set out what it regarded as outstanding issues following the submission of the addendum pack and subsequent re-consultation. Some of this related to detail in the design and access statement. The letter criticised, or sought more detail over:
 - the diversion of a Thames Water pipeline
 - LAPs and LEAPs
 - the robustness of the naturalistic play area
 - the open space schedule and ratio
 - the relationship of open space to wetland
 - cross sections and plans for Dolton Lane and Frogwelldown Lane
 - architectural design principles and ridge heights
 - the balance of hard and soft landscaping
 - widths of verges and frontage planting,
 - the community hub
 - the response to the flood risk objection from the parish councils
 - breeding opportunities for farmland birds
 - the extent and type of the nature reserve and its management and public access

- the management of the meadowland area and whether public access was compatible with farmland birds (notwithstanding that the Council had previously criticised the applicant's proposal to limit public access),
 - the number of bat and bird boxes per dwelling
 - green roofs
 - biodiversity net gain and ecological mitigation.
36. The letter stated that the Council was not in a position to take the matter to its planning committee.
37. This list of comments, requests and criticisms came more than 18 months after the submission of the application. The Council argues that the date of submission of the applicant's material made it impossible to determine the application within the timescale envisaged by the PPA. But the real cause of the delay was the length of time it had taken for the Council to produce substantive comments on these matters and the absence of meaningful feedback before that point.
38. The applicant responded on 19 May 2023. But the Council wrote to the applicant again on 25 July 2023 concerning the following:
- the nature and future management of the informal parkland and nature reserve
 - the balance between green and blue infrastructure
 - the adequacy of public access to open space
 - built design and materials and other matters of detailed design including the width of green verges and front gardens, the buffer to the A44 and the size of parking courts and the central green
 - aspects of ecology.
39. As with the letter of 27 April 2023, it stated that the Council was not in a position to take the matter to its planning committee.
40. The applicant again responded to the Council's criticisms on 4 August 2023. But the Council continued to hold out for responses to this range of requests and criticisms. Many of these should have raised more than a year earlier; many should not have been a stumbling block to granting outline planning permission. The applicant understandably concluded that the application was not likely to be brought to committee within a reasonable time and their appeal in September 2023 was justified.
41. From a reading of the committee report of 2 November 2023, after the submission of the appeal, it is evident that the Council's main ongoing concerns were the use and management of the meadowland; the habitats and management of the local nature reserve; the amount of provision per dwelling for bats and birds; and the management and maintenance of hydrological assets. To deal with this, the applicant produced options for the Council which were discussed at a meeting on 6 December 2023.
42. At that point the Council, no longer having responsibility for deciding the application and with an appeal inquiry in prospect, readily moved to resolve

any remaining issues and withdrew its objection on these matters on 13 December 2023. It was agreed that the items of concern to the Council would be covered by the reserved matters conditions and/or the planning obligation, together with a change to the parameter plan. Thus matters were not resolved until more than two years after the date of the application.

43. This was an outline application with all matters reserved except for the site access points, and it was substantially in accordance with Local Plan Policy PR9, for which much ecological survey work had already been undertaken. The applicant had already set out a proposed stewardship and legacy strategy for the site in the Design and Access Statement. A great many of the Council's criticisms and requests for further information in respect of the use and management of the green infrastructure were at a level of detail which was unnecessary for the outline application to be determined; and more substantive issues could have been readily resolved in much earlier discussions with the applicant or could have been sought by condition.
44. The alacrity which these matters were eventually dealt with by the Council when faced with the inquiry throws into relief the unreasonably slow and over-zealous approach it had taken until then towards the planning application and the putative reasons for refusal. The applicant was obliged to produce revised documents for consultation and to produce proofs of evidence and topic papers for the inquiry. This all led the applicants to incur unnecessary costs at the appeal stage. None of these matters should have needed to come to appeal.

Access to the replacement school playing field

45. The third putative reason for refusal was that the scheme had failed to secure an appropriate, safe and convenient access from William Fletcher Primary School to the proposed replacement playing fields. This is addressed in Costs Decision B, concerning Merton College's application for an award of costs against Oxfordshire County Council.

Viability

46. The fourth putative reason for refusal was that the scheme, when set against the financial viability of the scheme, would fail to provide an adequate level of affordable housing. The policy requirement and the level of affordable housing provision within the planning obligation are addressed in my main decision and are not repeated here.
47. The amount of affordable housing that could be supported by the scheme was closely related to the range of infrastructure and other requirements that were being sought by the Council. Financial viability was identified as a potential issue at the time of the submission of the planning application, in the light of the County Council's initial request for contributions. Thus the Council should have been aware at an early stage that it was going to be necessary to appoint viability consultants as a pre-requisite to establishing the relationship between infrastructure costs, affordable housing and viability, in order to agree baseline and methodology with the applicants, and to identify the costs attributable to the individual s106 requirements.
48. In a meeting on 23 December 2021, the applicant's agents expressed their concern to the District Council that the Council had not yet clarified its approach to housing mix. There was also a need to establish the framework for

viability, and in particular to clarify whether and how s106 contributions would be pooled or equalised across the allocated sites. These were matters that were relevant to the contents of any planning obligation, including the ability of the scheme to deliver the proportion of affordable housing sought by the policy.

49. These same issues were raised repeatedly by the applicant at monthly meetings. The lack of progress in respect of the terms of the planning obligation and the issue of financial viability were discussed at a meeting on 9 March 2022, when the Council admitted that matters had been severely delayed by non-receipt of the housing officer's comments. The housing officer's comments were provided six months after the submission of the planning application.
50. At the March meeting the Council stated that it was going to start the process of appointing the independent viability assessor. But meeting notes throughout much of 2022 demonstrate that the Council made slow progress on this. Emails show that the consultants were not appointed until the end of September 2022 and did not have an initial meeting with the applicant until November 2022, more than a year after the application had been submitted.
51. Once the base assumptions had been established, the applicant quickly produced the financial viability assessment, which was submitted on 20 January 2023. Following Council comments, a revised submission was made in May 2023. The Council sought more information in June 2023 and required a third party review of costs. This was only completed by 10 August 2023 and the Council's advisor issued an updated report on 31 August 2023. Further meetings were held and there were outstanding matters remaining in early 2024, including an additional request by the County Council. Agreement was finally reached in January 2024 just prior to the inquiry.
52. Even allowing for the procurement process, the appointment of viability consultants and the process of agreeing costs inputs was extraordinarily protracted. It is no excuse for the Council to argue that the applicant could have produced its own viability study, since the applicant needed to agree the base assumptions ahead of its formal financial viability assessment. If the Council had dealt with the viability issue (and the other matters referred to in this decision) at the appropriate time, the proportion of affordable housing and the scheme's infrastructure costs and contributions could have been agreed much earlier in the life of the planning application, and the matter of viability and affordable housing need not have come to an inquiry.

On-site infrastructure and off-site infrastructure contributions

53. The fifth putative reason for refusal was that, in the absence of a satisfactory planning obligation, the local planning authority was not satisfied that the development would provide for appropriate on-site infrastructure or infrastructure contributions towards off-site mitigation.
54. The absence of a planning obligation at the time of the appeal was not the applicant's fault. Draft heads of terms had been formulated in September and October 2021 and formed much of the framework for discussion at the monthly meetings. But the applicant experienced severe difficulty in getting concrete responses from both councils on viability and costs. This had a knock-on effect on timescale and hence the ability to finalise the planning obligation. The delay in appointing viability consultants has already been discussed above. Other

factors were the insistence of the County Council on further transport modelling, and the failure of the Council to reach agreement on fair and reasonable contributions for the transport infrastructure.

55. Detailed transport modelling had already been undertaken as part of the Local Plan Partial Review to establish the transport strategy for meeting Oxford's unmet housing needs, and an infrastructure delivery plan containing a detailed package of mitigation measures had been included in Appendix 4 of the plan. The applicant and County Council had been party to this work through their involvement in the Local Plan Partial Review. The proposed access strategy for the site was set out in the transport assessment and was submitted as part of the environmental statement.
56. Meeting notes demonstrate that, from October 2021 onwards, the applicant's agent had raised the need for a response from the District and County Councils in respect of transport modelling and s106 contributions, and over the following months the applicant made considerable efforts to engage with the councils on this subject. In a meeting in March 2022, by which time the application was already 5 months old, the applicant tried to establish some certainty by seeking confirmation that the current modelling work would allow the application to be determined, since the matters had been identified in the Local Plan examination and the infrastructure delivery plan.
57. In May 2022, when the application was 7 months old, the applicant urgently sought updated figures from the County Council in respect of infrastructure costs. These had not been forthcoming despite the fact that the principle of infrastructure provision had been discussed at the Local Plan examination and that Local Plan Partial Review Appendix 4 contained a comprehensive list of infrastructure requirements. Neither council identified a charging mechanism for the infrastructure contributions that would have assisted with viability discussions, using the costs that were identified in Appendix 4 of the Local Plan. The price per peak hour trip method was suggested in December 2022 but not taken forward by the County Council until October 2023.
58. In June 2022, 8 months after the submission of the application, and despite the extensive modelling and the identification of mitigation measures that had already been carried out, the County Council sought more information on safe and suitable access and various alterations to the highway works. It insisted on further modelling to the road network to demonstrate how the package of mitigation would alleviate the effects and wanted this done in conjunction with the other PR sites. The additional modelling took 21 months to agree with the County Council and ultimately it simply confirmed that the infrastructure work which had previously identified was required.
59. The County Council also requested a significant financial contribution towards infrastructure which had already been constructed or funded through the Oxfordshire Housing Growth Fund Deal. This is dealt with in Costs Decision B, concerning the applicant's claim against Oxfordshire County Council.
60. The County Council maintained an objection to the scheme which was not withdrawn until 13th October 2023 after the appeal had been made. The District Council argues that it was in no realistic position to grant permission in the face of the highway authority's objection. But this outline application proposed much the same amount of development as the local plan allocation; and the transport effects of the allocated sites had already been considered

through the local plan process and the necessary mitigation measures identified. The insistence by the County Council on re-visiting modelling, the length of time it took to get appropriate input from both councils, and the maintenance of an objection in the face of the agreed planning background were significant causes of delay. The District Council should have taken control of this situation much earlier, particularly given the existence of the PPA, the local plan allocation and the volume of work that had already been carried out. As the local planning authority charged with deciding the application, it should have taken a proportionate and fair approach to any request for further information. The option was there to seek independent advice on this matter. Transportation issues should not have been outstanding at the time the appeal.

Conclusions

61. The application, in outline, concerned the development of 540 homes on a site allocated for 540 homes under Policy PR9 of the Cherwell Local Plan 2011-2031 (Part 1) Partial Review Plan 2020. The policy was specifically dedicated to the development of this site, and it contained a clear set of requirements. In addition, substantial transport modelling had taken place at that stage and a package of transport measures had been identified.
62. The requirements of policy PR9 were expanded upon in the development brief, published in November 2021. This had been produced with joint input from the District and County Councils and Merton College and other stakeholders. The brief set out development parameters for a comprehensive scheme and sought the submission of many specialist documents.
63. There was therefore in existence a thoroughly researched and modelled policy and masterplanning framework, based itself on an examined and adopted local plan, with inputs from relevant stakeholders. The local plan allocation had itself been supported by a range of technical studies, and much of the fundamental work to identify necessary development and infrastructure requirements had already been done. The planning application itself, which was only in outline and differed in no great measure from the terms of the development plan policy and development brief, and contained the same number of homes, was supported by a comprehensive set of studies and evidence and an environmental statement.
64. Against this background, and having signed the PPA, the applicant was entitled to expect the Council to determine the application within the period specified by the PPA. And if that deadline could not be met, it was reasonable for the applicant to expect outstanding matters to be dealt with expeditiously. That did not happen; the process of obtaining relevant information from the Council and agreeing detail with them was laborious and protracted, and the Council was exceedingly late in seeking further information and amendments from the applicant. Despite numerous requests and reminders by the applicant over a long period of time, the Council failed to resolve matters of detail that could and should have been addressed much earlier. And when eventually the Council did send letters setting out its views, it pursued the applicant for an unnecessary and disproportionate amount of additional detail. Almost two years after the first signing of the PPA, the application had still not been determined. It is fully understandable that the applicant exercised its right of appeal against non-determination.

65. As local planning authority, and as a party to the PPA, the District Council had certain responsibilities: firstly to ensure that any request for information by the applicant was met in a timely fashion; secondly that any request from either council to undertake additional work was necessary, proportionate and timely; and thirdly that outstanding matters were resolved within a reasonable period. Some of these concerns originated from other parties including the County Council and specialist consultees, but the District Council did not take adequate control of matters to resolve issues and address delay. A balanced, proportionate and focused approach and better communication with the applicant would have resolved outstanding issues much earlier in the life of the application.
66. It is recognised by all parties that, following the departure of the original case officer, the Council's new case officer worked hard to gain familiarity with the case and was proactive in the monthly meetings. However, the fact that there was staff turnover is not a mitigating factor in respect of the delay suffered by this application. Planning Practice Guidance states that a PPA is a project management tool which the local planning authorities and applicants can use to agree timescales, actions and resources for handling particular applications, and that extra resource provided in this way needs to be used for additional capacity that is required to ensure a timely and effective service.
67. The concerns of the Council set out in the putative reasons for refusal should have been addressed early in the life of the application; some of them, in particular those relating to green infrastructure, could have been dealt with as conditions on a planning permission or as part of a planning obligation. The fact that all the objections were withdrawn by the Council prior to the opening of the inquiry demonstrates that there was nothing substantive in the Council's reasons for refusal that could not have been agreed much earlier in the process. As it was, the applicant was forced to address these matters through an appeal, and to produce revised material and re-consult at the appeal stage. It had to produce evidence on the reasons for refusal and, given that this was an appeal against non-determination, it had to produce adequate evidence on all matters relevant to the planning application to enable the decision-maker to reach a decision.
68. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, the behaviour and actions of the Council at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded. The Council acted unreasonably in its handling of the planning application and the application should not have needed to come to an appeal. The Council delayed development that should clearly have been permitted, failed to produce evidence that substantiated each putative reason for refusal, and issued putative reasons for refusal on grounds that were capable of being dealt with by planning condition or in an obligation. The Council's unreasonable behaviour led the applicant to the unnecessary costs of an appeal with the consequent need to maintain an appeal team with legal representation and to produce evidence on a wide range of matters.
69. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and an award of costs against Cherwell District Council is therefore warranted, covering all the costs relating to the appeal, with the exception of the two matters which are the subject of the costs claim against Oxfordshire County Council.

Costs Order

70. 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 Cherwell District Council shall pay to Merton College the full costs of the appeal proceedings described in the heading of this decision with the exception of appeal costs relating to the access to the replacement playing fields for William Fletcher Primary School and the strategic highway contribution sought for the Cassington Road to Peartree Interchange works, which are the subject of a separate costs claim; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Merton College, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Bore

INSPECTOR