



## Costs Decisions

Inquiry held from 25 June 2024 to 5 September 2024

Site visits made on 17 July 2024 and 18 July 2024

**by Jonathan Bore MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6<sup>th</sup> September 2024

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**Costs applications in relation to Appeal Ref: APP/D1265/W/23/3336518  
Land to the south of Alderholt, between Hillbury Road and Ringwood Road,  
and land to the west of Ringwood Road, Dorset, SP6 3DF**

### Application A

- 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 Dudsbury Homes (Southern) Ltd for a partial award of costs against Dorset Council.

### Application B

- 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 Dorset Council for a partial award of costs against Dudsbury Homes (Southern) Ltd.

The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for a mixed use development of up to 1,700 dwellings including affordable housing and care provision; 10,000sqm of employment space in the form of a business park; village centre with associated retail, commercial, community and health facilities; open space including the provision of suitable alternative natural green space (SANG); biodiversity enhancements; solar array, and new roads, access arrangements and associated infrastructure.

Both applications for costs were made in writing.

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## Decisions

### Application A

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

### Application B

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

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## Introduction

3. These applications are considered in the same decision letter because they overlap in their subject matter and raise common concerns about procedural matters, in particular pre-application discussion and the extension of time for determination. The parties' submissions are summarised and set out thematically, in the order of the Appellant's costs claim with responses; the Council's costs claim, with responses; and my conclusions.

## Application A – Appellant's case and Council's response

4. The Appellant sought a partial award of costs in connection with appeal proceedings concerning ecology (reason for refusal 1) affordable housing viability (reason for refusal 4), retail matters (reason for refusal 5) and education (reason for refusal 6). The following is a summary of the arguments raised in the Appellant's claim and the Council's response.

### *Ecology*

5. Appellant's argument: this matter took inquiry time up unnecessarily. Each of the matters raised by Natural England was capable of being addressed by conditions. Regarding air quality impacts on the New Forest, the Council should have requested further information during the course of the application as required by the EIA Regulations. On receipt of further information, the Council should have reviewed its position and removed the reasons for refusal before the inquiry. As regards nutrient neutrality, all the information that Natural England had sought was provided. However, the Council took a different view as to what was required, which included a series of issues that had been previously resolved. At the inquiry, the Council's witness accepted that each of the matters raised could be dealt with by planning condition or obligation and accepted that no further information was required in respect of the availability of phosphate mitigation. There was no reason why it should have been necessary to deal with this issue at the inquiry.
6. Council's response: in respect of New Forest Air Quality, the assessment was delayed because of the disagreement about highway trips and when it was received the Appellant accepted the need to make contributions to mitigate impact. As regards the Dorset Heathlands, River Avon and New Forest Special Areas of Conservation, Natural England's consultation response was an objection on the basis that further information was required; it could not confirm that there would be no adverse effects. There was also information missing in relation to suitable alternative natural greenspace management and no agreement about the amount of traffic to take into account air quality work. On 19 April 2024 there was a meeting between the Appellant, Natural England and the Council and agreement was reached on further action and information required of the Appellant. A substantial amount of additional information was provided by the Appellant during the course of the appeal process including Addendum HRA information. There was an outstanding issue to resolve about how to deal with nutrient neutrality and SANG, and in particular whether a Grampian style condition could be used and what its terms would be. Natural England was not in a position to respond until after the inquiry had opened. It was appropriate for the Council to wait until that response had been received. The Council followed the advice of its statutory consultee and did not behave unreasonably.

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### *Affordable housing and viability*

7. Appellant's argument: the Council refused to review the information in the Viability Report of May 2023 because the inputs were not agreed. It was unreasonable for the Council to have refused the application without assessing the viability information, since if it had been reviewed, agreement on affordable housing provision would have been reached. Once the Council's viability experts were appointed there was a lack of timely engagement with the evidence. The Council's position should have been established before the filing of evidence, but it changed twice after that point. The Appellant's offer should have been promptly accepted rather than wasting a day of the inquiry on the Council's viability evidence.
8. Council's response: at the time of the Viability Report of May 2023, key elements affecting viability were not agreed, including highways improvements, education strategy, habitats site mitigation and s106 contributions. The Viability Report was largely superseded in terms of inputs by other material during the appeal process, so it would not have sufficed to justify a lower than policy compliant level of affordable housing. A wide range of fresh technical evidence was submitted including the Appellant's valuation work of April 2024. The Council's role was to evaluate the robustness of the evidence and seek verification, and its valuers engaged with the Appellant in a timely manner. The April 2024 valuation work was inaccurate and expressly informal, and the Council acted reasonably in commissioning its own work to verify it. The Council provided verification via a Red Book valuation which provided a higher existing use value than it had been assuming and this brought the parties closer together. The Council did not accept the Appellant's original offer but insisted on various compromises including the incorporation in the s106 obligation of a two-stage review. The Council behaved reasonably at every stage.

### *Retail matters*

9. Appellant's argument: a sequential assessment and retail impact assessment were provided after this issue had been identified in the officer's report and had appeared in the reasons for refusal. It was accepted that the scheme passed the sequential test and, subject to condition, would not have an impact on other centres. However, the Council continued to pursue its objection. This matter should have been resolved long before the inquiry. The Council also raised a new issue concerning the impact on the Co-op which had no support in policy.
10. Council's response: the application included main town centre uses outside a main town centre, so according to both national and local policy a sequential test assessment and retail impact assessment were required. The Appellant chose not to submit such an assessment at first although they eventually provided one. The Council pointed out that, owing to the combined floorspace of the village centre and employment area, a condition would be required to control the uses to avoid impacts on other centres. There was subsequent correspondence on the contents of such a condition. The Appellant continued to push for a condition containing more flexibility than the retail assessment had assessed, which meant that the Council were unable to form a view on the impact due to absence of information. It was not unreasonable for the Council to pursue its argument on the Co-op as it had appeared in the retail

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assessment and the impact on facilities for existing residents in Alderholt is a material consideration.

### *Education*

11. Appellant's argument: it was originally proposed to create a primary school on the existing St James's School site as part of a change from a three tier to a two tier education system. This was rejected by the Council, so the Appellant proposed an expanded first school on the existing site and accepted that the education system would remain in three tiers. The Council originally sought a full 360 place school on a separate suitable site fully funded by the Appellant, but this raised questions about compliance with the CIL regulations. The Council subsequently accepted that the St James' First School could be expanded on its existing site. A review proposal with options was originally put forward by the Appellant in a draft s106 agreement in April 2024 but was rejected by the Council. But the Council eventually agreed the s106 obligation with a review mechanism to enable either land and contributions to be made towards a new primary school within the red line area of the appeal site, or the expansion of the St James's First School. The review mechanism contained in the s106 obligation was agreed on the first week of the inquiry. The matter was clearly capable of being dealt with earlier and the Appellant was put to unnecessary cost in having to deal with it through the inquiry.
12. Council's response: the Council made its position clear from the moment it was consulted as Local Education Authority, but the Appellant developed a strategy entirely without reference to the Education Authority. The Appellant had accepted in a meeting that the expansion of St James on its existing site was not ideal it had been put forward to get the application approved and to avoid having to add a school into the scheme. But the Appellant did not make the offer of a new school within the red line boundary until shortly before education evidence was due to be given. The Appellant's original review proposal was not the same as the currently agreed s106 obligation since an alternative site was not identified and it was only an obligation to submit a scheme to explore the feasibility of transitioning from a three tier to a two-tier system. It was not acceptable to the Council. Another version of the s106 obligation did not even feature a review mechanism. The Council behaved reasonably at all times.

### **Application B: Council's case and Appellant's response**

13. The Council sought a partial award of costs on the issues of highways (reason for refusal 7), affordable housing and viability (reason for refusal 4) and education (reason for refusal 6). The following is a summary of the arguments raised in the Council's claim and the Appellant's response.

### *Highways*

14. Council's argument: the Appellant chose not to make use of the Council's chargeable pre-application advice service or that of Hampshire Highway Authority. Dorset Highways Authority agreed the methodology for the trip internalisation report but did not agree with the predicted number of trips because it did not accept that the proposed local facilities would reduce the need to travel to the extent suggested by the Appellant. A greater number of trips would have implications for the degree of mitigation required at junctions and links. Hampshire County Highway Authority also objected, pointing out that the trip rates used by the Appellant were lower than used in developments in

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Hampshire. The Council took into account the views of its statutory consultees and concluded against relying on the assumptions of the Transport Assessment. After the Council had come to its decision, the Appellant produced a fresh assessment of impacts in the form of the Transport Assessment Addendum. This was issued in May 2024, a month before the inquiry began. It contained a substantial volume of new technical information including a reappraisal of local highways impacts and new material relating to road widening and pedestrian and cycle infrastructure. Its approach to sensitivity testing was inconsistent in respect of the National Highways A31 junction compared with that for the highway network in Dorset and Hampshire. Hampshire County Highways Authority considered that the capacity modelling should be repeated using the same flows used for the National Highways assessment. The Appellant behaved unreasonably in producing substantial new evidence at such a late stage and also behaved unreasonably in failing to undertake its assessment work on a consistent basis. The Council was put to unnecessary and wasted expenditure in having to deal with two transport assessments plus detailed appendices, and the smooth preparation for the inquiry was disrupted by the volume and timing of the new information.

15. Appellant's response: although it did not seek paid pre-application advice from the local planning authority, it had engaged extensively with Dorset Council and its predecessor for several years in connection with development on the appeal site. It had paid for formal pre-application advice from the Highway Authority, engaged with other consultees and carried out extensive community consultation. It had commissioned Dorset Council to use its own microsimulation model to assess the proposed quantum of development which concluded that the existing layouts could accommodate potential development up to 1,750 dwellings. In an email of June 2022, the highway authority had accepted the scope of the assessment the principle of the methodology, the trip distribution, the suggested modelling scenarios and the suggested junctions to be modelled, including Fordingbridge. There was nothing unreasonable in the original Transport Assessment since the scope had been agreed by the Highways Authority. There was no suggestion that the Appellant should have separately consulted Hampshire County Council as it was expected that Dorset Council would consult Hampshire as a matter of course. The responses from the Highways Authorities and National Highways raised substantive issues but the Council declined to extend the time for determination. It was contrary to the EIA Regulations for the Council to proceed to determine the application on the basis of unanswered criticisms. It was incumbent on the planning authority to obtain a response to the points raised by the consultees and if necessary to obtain further information. The Transport Assessment Addendum was not a new document, it was a specific response to points made by consultees. It was produced late because of the Council's delay in appointing its own highways consultants but there is no suggestion that the Council's highways witness was unable to produce his evidence as a result. The sensitivity test applied to the National Highways assessment was not duplicated for the junctions in Hampshire, since the trip reduction assumptions had been agreed, and in any case it made no difference to the assessment of the impacts, as was agreed in evidence.

#### *Affordable housing and viability*

16. Council's argument: the Appellant failed to undertake any formal pre-application advice and failed at the application stage to justify its offer of 35%

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affordable housing as opposed to the policy requirement of 50%. The Appellant's second report, late in the day, demonstrated a surplus, thus showing that more than 35% could be provided. A significant amount of new information was provided by the Appellant during the course of the appeal which should have been submitted at the application stage. Agreement had not been reached before the inquiry began. In addition, the Appellant resiled from an agreed position in the relevant Topic Paper in respect of the multiplier used to calculate the Site Value Benchmark. The Council was put to the expense of reviewing and providing evidence on the inadequate reports submitted at the application stage and the substantial volume of fresh material submitted during the course of the appeal.

17. Appellant's response: the Appellant's position is largely set out in its own costs application on this matter. The Council did not even consider the submitted viability information before refusing the appeal. That the Appellant did not engage in pre-application consultation on viability was not unreasonable, since the Council had not engaged a consultant at that time and it is unclear who the Appellant could have engaged with. Verification of the Council's inputs was not sought until well into the appeal process, so it was obviously reasonable for the Appellant to respond to them at that time. Between the exchange of evidence and the inquiry, the Council's consultant substantially changed his position on the level of affordable housing that could be supported; the affordable housing offer was rejected, then accepted following his cross examination. The Council's misunderstood the Appellant's approach to benchmark land value and the multiplier; the Appellant did not resile from any agreement on the multiplier since that was not the means by which benchmark land value had been derived.

### *Education*

18. Council's argument: at the time the planning application was made the Appellant had not consulted with the Council's education team. Instead, it pursued its own education strategy, proposing expansion on the St James's First School site without producing any formal assessment of whether the school could accommodate the expansion. Its strategy was based on discussions with the school but not the Council's education team. The Appellant did not ask its masterplanning consultant to design a scheme with a school elsewhere on the appeal site, instead persisting with its proposal to expand on the First School site with all the disruption that would cause, but without any detailed feasibility work to demonstrate how it might be achieved. This was unreasonable behaviour. The Appellant's Education Mitigation Strategy was produced in April 2024, updated in May, and later in April highways and tree information was produced. During the course of the application the Appellant informally approached the Council to see whether the application could be amended to include a school elsewhere on the appeal site. The Council said that this would be a substantive change requiring a new planning application. The Appellant made a further proposal immediately before the Council's education witness was due to give evidence. This was very late in the day. The Council was caused unnecessary expenditure in the appeal process because of the need to produce evidence and witnesses on this topic.
19. Appellant's response:
20. The Appellant's costs application largely covers this issue. There was no requirement to seek pre-application advice from the education team. The

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education proposals were formulated based on the obvious desirability of providing a primary school in place of the first school, and the school's desire to remain on its current site. The Appellant consulted with St James's School because it had indicated that it would not be willing to move to a different site. The Appellant sought discussions with the Council in April 2023 but there was no response before the determination of the application. In February 2024 the Appellant's consultant asked the planning authority whether an obligation to provide a site within the appeal site would address their concerns and he was advised that it would not. A review mechanism was drafted into the s106 obligation by the Appellant but was deleted by the planning authority. It was later accepted by the Council at the inquiry and included in a subsequent draft version of the s106 obligation. It was the Council, not the Appellant, who had behaved unreasonably.

## **Conclusions**

21. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.
22. The National Planning Policy Framework encourages early engagement as a means of improving the efficiency and effectiveness of the planning system. In this case the Appellant had been involved in discussions over several years in connection first with the draft East Dorset Local Plan, in which an Alderholt development was a significant component; and then, after reorganisation, the Dorset Local Plan, which included options for development at Alderholt of different scales. Neither plan was progressed to Regulation 19 stage. The Appellant's work had included commissioning traffic modelling from Dorset County Council and undertaking consultation with local people and statutory consultees.
23. At some point before work on the draft Dorset Local Plan was abandoned, the Council became unsupportive of expansion at Alderholt. The Appellant therefore decided to submit a planning application. Owing to its previous lengthy engagement with the Council, it chose not to enter into paid pre-application discussions. The Appellant considered that it had gleaned substantial information already. It believed that further discussions would not bear fruit and that they would simply be paying to receive advice that their planning application would be refused. The Appellants might have felt justified in this stance in the light of the Council's persistent dogged opposition to many aspects of the scheme that could have been (and belatedly were) resolved. Nevertheless, the Appellant's decision precluded the opportunity for discussions which might have narrowed down and clarified some of the disputed topics.
24. In consequence, although the application was submitted with a great deal of supporting material including technical studies, there was no clear indication that what had been submitted would necessarily satisfy the planning authority and its consultees. Inevitably, while considering the planning application, the Council concluded that there were matters that had not been addressed to its satisfaction. The Appellant therefore asked whether the Council would accept an extension of the determination period beyond the statutory time period in order to resolve those matters. The Council refused, since its normal approach is not to grant extensions of time where an applicant has not sought its paid pre-application advice.

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25. As a general approach, the Council's position on extensions of time is understandable; it is a way of avoiding unnecessary pressure on limited staff resources and the public purse. But the Council should have exercised its discretion to take a different approach in this case, given the history of the site, the size of the application, the housing land supply shortage, the connection with strategic issues including settlement policy, education policy and habitats, and the obvious likelihood that the scheme would be taken to appeal. The outstanding matters would need to be resolved at some point and the best approach would have been to deal with them as part of the planning application.
  26. The product of this lack of engagement on both sides was a set of reasons for refusal which were mostly founded, not on the Council's professional planning judgment of the scheme's merits, but on a claim of inadequate or missing information, with 6 of the 9 reasons for refusal containing the words "it has not been demonstrated". This was not a satisfactory outcome, since such a decision does not provide the applicant or interested parties with a clear indication of what is wrong with the development proposal, or what is necessary to remedy it, assuming it can be remedied, nor does it provide a clear context for the parties to prepare their material in the event of an appeal.
  27. There was no legal or overriding policy requirement on the Appellant to seek paid pre-application advice, or on the Council to grant an extension of time, and I do not conclude that either party exhibited demonstrable unreasonableness. However, the behaviour of both parties led to an appeal in which the substance of the issues identified in the reasons for refusal (except for surface water management which had already been dealt with) had to be supported by further information, clarified and debated during the course of the appeal, with many matters not resolved until the inquiry itself. This took up both parties' time in preparing and presenting evidence and it took up inquiry time.
  28. In respect of habitats and ecology, the Council did not seek further information in respect of air quality during the course of the application, as it was required to do under Regulation 25. However, the Transport Assessment Addendum that might have informed that issue was submitted much later and technical highways disagreements over trip rates remained. Issues over nutrient neutrality and suitable alternative natural greenspace, and Natural England's final views on these subjects, were not resolved until the inquiry was under way. The delay in addressing these matters was the responsibility of both parties.
  29. On affordable housing and viability, the Appellant submitted a viability report for the application, but the Council did not review the information because there were several unresolved issues at the time that would have affected viability. Further viability information was produced very late by both parties such that agreement was not reached until the inquiry was under way. The argument over benchmark land value was made worse by an apparent misunderstanding of the role of the multiplier, which was not a totemic figure but just the product of a reasonable uplift. But this technical dispute is not central to the outcome of these costs applications. Rather, it was the lack of timely engagement by both parties that led to the position in which the final level of affordable housing was not agreed until the inquiry was under way.

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30. As regards retail matters, the Council followed the letter of Local Plan Policy KS7 in respect of the sequential test and impact assessment. However, the scheme proposed only a modest centre that was meant to serve the new development and would be most unlikely to affect other centres, so the Appellant cannot be considered unreasonable for not submitting such assessments with the application. The dispute over the proposed planning condition governing the range of town centre uses was a legitimate planning disagreement between the parties. In respect of the impact on the Co-op, the Council rather imaginatively applied Local Plan Policy LN7 as discussed in the appeal decision, but so did the Appellant's witness, so the issue here was perhaps one of policy ambiguity rather than unreasonableness. The issue of the Co-op was raised by the Rule 6 parties so it would have had to have been addressed by the Appellant in any event. Neither party behaved unreasonably on this issue.
31. In respect of education, having consulted St James's First School, the Appellant developed the idea of creating a primary school on the existing site. It thought this would reflect local wishes, but the strategy did not gain the support of Dorset Council as Education Authority. Pursuing a scheme without due regard to the Education Authority's position was not ideal, but on the other hand the Council's approach, which was to seek contributions in full towards another school site, was in excess of that required to make the development acceptable and was contrary to the CIL Regulations. There were also arguments late in the day over whether the offer of a new school site was included within the red line boundary, and the masterplanning implications of including such a site. Neither party approached this subject in a manner that would allow an appropriate and timely solution to be reached and there were subsequent problems because of the legal difficulty of amending the submitted scheme to include a school site elsewhere. In the end a review clause was inserted in the s106 obligation. Education provision for a proposal of this size was an extremely important matter and the responsibility for the unsatisfactory chain of events and the late resolution of this issue rests with both parties.
32. Ultimately, as can be read in the appeal decision, it was only the highways aspects of the scheme that were instrumental in the dismissal of the appeal, with the distance from other higher order facilities also being of concern. The lateness of the Transport Assessment Addendum was the product of the inadequacy of early engagement for which both parties were responsible, as discussed above. The disputes over trip rates, sensitivity testing and junction capacity were legitimate professional disagreements in which both Council and Appellant behaved reasonably. To a degree the disputes over methodology and modelling inputs distracted from the key issue, which was the inferior quality of the highway network serving the development and the inadequate proposals for remediating its deficiencies. These deficiencies were stark and could clearly be identified from any site visit. They were best expressed in the evidence, not of the main parties, but that of Action4Alderholt.
33. I have read and heard the evidence on all these matters and have understood the small print of the parties' disagreements that have led to their costs claims, but it would serve no purpose to discuss them in any greater detail here. The fundamental problem in most of these topics was the lack of timely engagement for which the Appellant and the Council were jointly responsible. With a different approach from both parties, many of these matters could have

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either been resolved, or the disagreements clarified and narrowed down, before the refusal and appeal, and certainly before the inquiry.

34. In conclusion, I have not found unreasonable behaviour as such, but the lack of early engagement by both parties has clearly led them both to incur wasted expense in having to prepare evidence for the inquiry. An award of costs is not warranted in respect of either application.

*Jonathan Bore*

INSPECTOR