



Costs Decision

Hearing held on 14 January 2025

Site visit made on 14 January 2025

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Costs application in relation to Appeal Ref: APP/E3715/W/24/3352092

- 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 application is made by Signature Group Limited for a full award of costs against Rugby Borough Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for ancillary accommodation comprising 40 cabins on a temporary basis for 18 months without complying with conditions attached to planning permission Ref R22/0193 (appeal Ref: 3318322), dated 31 July 2023.

**Dunchurch Park Hotel and Conference Centre, Rugby Road, Dunchurch,
Warwickshire, CV22 6QW**

Decision

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

Submissions

2. The applicant's case for a full award of costs was made in writing prior to the Hearing and was supplemented orally following the discussions in the Hearing. The Council's response to this was presented orally at the hearing, and the applicant made further points orally. Details of the oral submissions are set out in the Annexe at the end of this decision.

Reasons

3. 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. Claims can be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
4. There are several strands to the applicant's case. The applicant argues that there were no substantive reasons to justify delaying the determination of the application, and the Council persisted in objecting to a scheme, which an Inspector had previously indicated to be acceptable. In doing so, it is put to me, it failed to grant a further permission for a scheme where there had been no material change in circumstances. It is therefore put to me, that the Council delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Moreover, the applicant submits that the Council did not cooperate and deliberately concealed relevant evidence during the appeal and failed to review its case.

5. The crux of the Council's position was that in assessing the balance of considerations it did not consider the public benefits to be sufficient to outweigh the weight to be given to the harm to the designated heritage assets. The Council considered the previous Inspector's decision in reaching its findings. However, it considered that there had been a change in position from that decision, referring to the 'acute need' identified by the previous Inspector. Moreover, it was put to me that the change in Government had led to a shift from an 'intention' to reduce the reliance on hotels, to a 'commitment'.
6. Reviewing the early chronology of the planning application, it strikes me that the parties were working together to resolve issues, such as the description of the development and consultation with the Home Office. Whilst delays occurred, there is no evidence that this was a deliberate tactic by the Council. The Council were not convinced by the evidence provided by the applicant during the application and sought further quantification from the applicant and Home Office. Considering such matters relate to planning judgement, this is not an unreasonable approach.
7. The applicant was informed that the application would be determined under delegated powers, only for it to be called in to be heard at a Planning Committee. The Council indicate this decision was made due to the national civil unrest in the summer of 2024 and thus public interest. Whilst there is no evidence of local unrest, I do not consider this to be an unreasonable response to wider circumstances, even with the previous advice given.
8. Moreover, based on the evidence submitted by both parties as part of the appeal, it is reasonable to conclude that further communication, or an earlier committee date would not have overcome the matters in dispute. As such, although delays did occur during the planning application, I cannot conclude that an appeal would have been avoided if a decision had been made by the Council at an earlier committee.
9. The Council's statement of case sets out that if the application had been determined it would have been refused for two reasons that are complete, precise, specific, and relevant to the application. This followed Members consideration of the scheme at committee. The reasons refer to conflict with policies, including Policy SDC3 of the Council's Local Plan. This policy reflects the heritage balancing exercise found within the National Planning Policy Framework which the Council undertook. Such a conclusion arises from matters of judgement. The Council sought to quantify where it considered there were distinctions from the previous appeal and how it had had regard to human rights and the Public Sector Equalities Duty.
10. The applicant provided a large amount of evidence in the application and during the appeal. However, it is not unreasonable for parties to come to a different conclusion, based on the same information. The Council placed an emphasis on the Inspectors reference to an 'acute need' 'at that time' in the previous appeal decision. In this regard, it is not an illogical approach to consider the degree of need in the balancing exercise.
11. The applicant stipulated that photos of the site, prior to the installation of the cabins, were provided to Members at the committee. The council has not explained why Members were not provided with photographs of the cabins in situ. The Council's committee report referred to the Home Office letter and although a full copy was not provided to members, the committee report included key quotes. Overall, I am

satisfied that Members had sufficient information before them to make an informed decision on the Council's position in the appeal.

12. Consequently, irrespective of the outcome of the appeal, I cannot find that the Council behaved unreasonably relative to the main issues in offering a different view to my own, given the subjectivity of the heritage balance and judgement made.
13. The applicant also contends that the Council did not agree a meaningful Statement of Common Ground in a timely manner, refusing to agree matters that were subsequently agreed during the Hearing. However, one was submitted in an agreed format within the deadline. A more detailed statement setting clearly where the matters in dispute were, would have been more helpful at the Hearing, for example stipulating whether it was agreed that the level of harm to the designated heritage assets was low. Nonetheless, such matters do not amount to unreasonable behaviour.
14. Regarding, the Council reviewing its case, the Council submitted its Statement within the time limits setting down its position. The applicant had written directly to the Council, outside of the appeal system, in November 2024. However, and notwithstanding my findings in the appeal, the Council's position was clearly articulated in the Hearing and there is no firm reason to indicate that they did not review its case, only that the Council did not change its position, a matter that it is entitled to do.
15. The Council did receive a second letter from the Home Office dated 29 November 2024. This was after written statements had been submitted in the appeal but before the Statement of Common Ground was submitted. This letter was not disclosed to the applicant or Inspector until mid-way through the Hearing. This was unreasonable behaviour. However, I am not convinced it was deliberately concealed. The Council referred to it during discussions as though all parties were aware of its existence and thought that it had been shared. Moreover, the letter was short, no adjournment was needed to consider its content, and the letter did not change either parties positions. Accordingly, the failure to disclose the letter did not lead to wasted expense in the appeal.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Mr R Walker

INSPECTOR

Annexe: Submissions made orally at the Hearing

Applicant

17. It is evident that the council has failed to apply the correct approach to the determination of this application. It unreasonably sought to disregard matters relating to the asylum system which are all a matter of public record. Even after the council had received the appellant's appeal and its statement of case, they persisted in opposing the appeal on the basis that they weren't convinced of the need for the accommodation. This is despite a letter sent by the appellant dated the 18 November 2024, which comprehensively sets out quotes from ministers from publicly available sources of the overwhelming need to continue to provide accommodation for asylum seekers across the UK.
18. The letter also refers to the recent opening of new hotel sites in Berkshire, Altrincham, Newport Pagnell, Warwick, and Peterborough, which are referred to as being needed to deal with the urgent need for asylum seekers accommodation. That letter clearly put the council on notice that its case was fundamentally perverse and invited them to review their position. It also pointed out that they had failed to have regard to the loss of accommodation for the existing destitute families in occupation. Despite this they pressed on.
19. Today's hearing has further emphasised and underlined that unreasonable stance of this council. It is not often that a planning authority acts so irresponsibly in the face of a recent carefully considered appeal decision where all matters were addressed by an inspector at a Hearing. It should have been a simple matter of extending the time for this permission based on the self-evident fact that the pods were still needed for a further period of 18 months, given the national position. It was unreasonable for the council to fail to determine the application knowing that the 18 months was due to expire in January of this year.
20. The appellant acted responsibly once it was clear that the pods were continued to be needed for longer and in very good time made its application to the council. The council acted unreasonably in failing to determine an application that had very recently been determined by a planning inspector. Today has shown that there has been no credible answer to any of the failures by the council to consider the correct considerations. It has taken a strange and blinkered approach despite having no discernible basis to do so. This is a classic case envisaged by the government on costs. This is an appeal that should not have needed to happen, sir you have the chronology of this process, and this demonstrates unreasonable behaviour that has led to the occurrence of wasted costs. The appellant seeks its full costs.
21. We also note that the council made its flagship point that there was no evidence of need for Dunchurch to be used. I'm afraid to say that the council did not disclose to you or to us the letter of the 29 November 2024 which in of itself makes clear that Dunchurch is required in terms albeit they already had the 23 August 2024 letter as well. The council failed to review its case at numerous occasions and for all these reasons the council has acted unreasonably.

Council

22. The key factors we consider are that we have been reasonable to consider the doubling of the duration of the heritage harm which would have arisen if this application was allowed. The council never challenged the principle of asylum

seekers accommodation on the site only the siting of the pods as that was the scope of the application. The council considers that it acted reasonably in following its adopted and publicised scheme of delegation which includes the power of a chief officer to call a case to be considered by members of the planning committee where there is public interest in doing so. In this case the national civil unrest and riots that occurred in the summer of 2024 raised public interest and awareness of asylum issues and how asylum seekers were accommodated in the UK and in particular the use of hotels for this purpose.

23. The council gave the appellant numerous opportunities to provide supporting evidence to support their case and made it clear that we were willing to consider any or all evidence they chose to submit. The delays that have occurred during the processing of the application had been justified by the council and included time allowed for the appellant to provide evidence to accommodate necessary procedural timescales for consultations and consideration of consultations received and the scheduling requirements for taking applications to the planning committee. The appellant was aware of these factors at the time of lodging their appeal and refused to allow sufficient time for the council to take the case to the planning committee for determination. With any application a local planning authority can only consider the evidence that is available to them and in this case insufficient evidence was submitted to justify the continuation of the recognised harm to the heritage assets. The council has therefore acted reasonably in undertaking its duties in this case.
24. The approach, need and evidence: It was said in the appellants costs application toward the end that it was the council's flagship point that there was no evidence of need. As you know Sir not least from today's discussion that is not the Council's case, nor has it ever been, and the appellant is wrong to say that the council has disputed a need for such accommodation. This leads into the second point that the approach taken by the council has been entirely consistent with the approach taken in the previous appeal. For permission to be granted the heritage harm must be overcome, in the council's view the previous inspector found that to be the case considering there to be an acute need.
25. It is entirely reasonable to the council to seek evidence in relation to the level of need and to reach the conclusions that it did on the basis of the evidence before it. Nothing in the appellant's letter of the 18 November 2024 demonstrates the council's approach to being unreasonable nor in giving its evidence today has the council acted unreasonably. To the contrary it has worked exactly within the framework of the previous appeal decision. The residual matters which lie between the parties are entirely matters of planning judgement. Accordingly, the council has acted reasonably throughout, and the costs application should be refused.

Applicant's final comments

26. First the council said that they had been reasonable in considering the doubling of the duration of the heritage harm. This itself shows how unreasonable they have been. The heritage harm has not been doubled whether in terms of duration or otherwise. Heritage harm has to be considered in accordance with policy. You cannot put the harm without considering the benefits. The council ignored the clear findings of the Inspector that there was compliance with Policy SDC3 in relation to the heritage harm and ignored the findings that the same scheme accorded with

the development plan when read as a whole. Nowhere has the council understood this compliance with the development plan means the scheme was acceptable.

27. The second issue that was raised was that the council thought that because of issues or riots in some other parts of the country unconnected with this appeal or any of its occupants it was entitled to disregard the statutory time limits that determine applications. This was unreasonable behaviour. Contrary to what has been said in response the council acted in a very uncooperative manner throughout including very recently in refusing to agree matters in the statement of common ground that they readily agreed today. There has also been no response from the council for the failure to disclose until mid-hearing the 29 November 2024 letter. Concealing relevant evidence is a type of behaviour listed in the planning practice guidance that may give rise to costs.
28. The council says to you now that they were waiting for evidence of need. This letter says in terms that the Home Office had no intention to cease the use of Dunchurch. They had evidence. They did not disclose this evidence. We have checked, and it appears you also didn't have it. There is no explanation at all as to why we were not provided with this letter dated over six weeks ago. The council had the opportunity to respond but have remained silent on this point. Neither the advocate or Miss Davies have explained why this was concealed. This is a serious matter and is further evidence of unreasonable behaviour.

End of submissions