



Costs Decision

Inquiry held on 5-9 and 12-15 November 2024

Site visit made on 15 November 2024

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2025

Costs application in relation to Appeal Ref:

APP/D1780/W/24/3347358

**Land to rear of former St Mary's College, Midanbury Lane,
Southampton, Hampshire, SO18 4HE**

- 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 Sovereign Network Group for a full award of costs against Southampton City Council.
 - The Inquiry was in connection with an appeal against the refusal of planning permission for re-development of the site to create 84 dwellings (8 x one bed apartments, 24 x 2 two apartments, 27 x two bed houses, 22 x three bed houses, 3 x four bed houses) with associated car and cycle parking, landscaped areas, play space and associated works.
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Decision

1. Partial costs are awarded as set out in the terms below.

The submissions by the Sovereign Network Group

2. There was no merit to any of the grounds in the reasons for refusal. In addition, there was no 'real world consideration' of the implications, particularly in terms of residential amenity when the Environmental Health Officer and Highways Officer had no objections.
3. The Appellant worked closely with Council Officers, responded positively to consultees, and engaged with the community, which should have led to a positive outcome.
4. The Council departed from their reasons for refusal and their position evolved in their Statement of Case and Proofs of Evidence. This is demonstrated in their suggestion that the site was a 'key open space'. In addition, new issues were introduced which had increasingly less relationship to the reasons for refusal. The Council threw everything at the appeal proposal.
5. There was a failure to disclose the relevant documents to consider the case. Information was not provided to the Appellant despite a request, which hampered preparation of the evidence and Inquiry time was also wasted as the relevant information was not provided.
6. The above documents centre on a Draft Playing Pitch Strategy (PPS). Mr Grady on behalf of the Appellant was made aware of its presence in the summer of 2022, during a meeting with the Council's property team, who were at the time

responsible for the PPS. He was unable to find the document in the public domain and requested its disclosure, without success. Later, on 17 April 2023, Mr Crawford, the Appellant's planning manager, requested it was provided but to no avail. A Freedom of Information (FOI) request was made in August 2024 and on 12 September 2024 the Council indicated it would not disclose the document as it was intended for future publication.

7. The Council made reference to the Draft PPS in their Statement of Case. Latterly Part D of the Draft PPS was disclosed in an appendix to the Council's Proof of Evidence on 8 October. In his rebuttal evidence Mr Grady highlighted that the submitted Draft PPS was incomplete. 'The last tranche of PPS evidence was not given to the Appellant until the final day of the inquiry, on 15 November 2024'¹.
8. In addition, the Appellant's reply to the Council's response to this costs application, summarised below, suggests that there was 'trespass' onto matters of closing, which is inappropriate. It is also suggested that the reasons for refusal were vague.

The response by Southampton City Council

9. The refusal of the application against officers advice was not unreasonable behaviour as Councillors were entitled to come to their decision. Similarly, the Council was not bound by the pre-application process.
10. This is not a development which clearly should have been permitted. There were competing material considerations which had to be balanced in the decision making process.
11. Each of the reasons for refusal was defended and substantiated at the Inquiry by professional officers in a clear and focused manner, in particular the loss of open space was clearly contrary to policy. In relation to the second reason for refusal the Council compared the proposed design to the context of the surrounding streets. In terms of the third reason for refusal, the Council consistently had a concern about the potential effect of increased traffic on residential amenity, which was highlighted in the Statement of Common Ground as a matter in dispute. The Appellant focused on the technical highway input and offered no substantive comment on the noise report. The Council's planning witness explained credibly the concern in planning terms, even though the Environmental Health Officer and Highways Officer had no objections.
12. In terms of the references to key open spaces the Statement of Case cannot be expected to cover all the details to be considered.
13. The Appellant introduced new evidence at the Inquiry: the Prospect House scheme was suggested as setting a precedent for acceptable design and the capacity was boosted by the 3G pitches.
14. The 17 April 2023 request for the Draft PPS was made prior to the determination of the application and pre-dated the appeal process. The subsequent FOI request was not dealt with by the planning appeal team, rather it went to a specialist unit and should have been properly targeted on submission. In addition, the Council did not rely upon the Draft PPS for its case

¹ Appellant costs paragraph 33

and instead suggested that the Riverside Park mitigation provision was inadequate.

Reasons

15. 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.
16. The wording of the reasons for refusal were lacking in precision however they were clarified in the Council's Statement of Case. I did not find that this led to superfluous evidence being prepared by the Appellant in the proofs of evidence.
17. The Local Plan does not identify the appeal site for development and the Council was unable to support the proposal bearing in mind the protective nature of the open space policies.
18. Whilst I did not find in the main decision that the site was a key open space, that was open to interpretation. I did find that in the main decision the proposal contravened the relevant policies and accordingly, the Council's conclusion on this first reason for refusal was reasonable.
19. In terms of the second reason for refusal the Council looked at the surrounding context and interpreted the proposal in that regard, which was appropriate. In terms of the third reason the Council quoted the results from the submitted noise report and analysed the nature of the existing residential properties to explain their stance. Both the second and third reasons for refusal involved matters of judgment rather than precision and although I came to a contrary conclusion in the main decision, the Council's decision was rational.
20. Although I also came to a contrary conclusion on the overall acceptability of the proposal in the main decision, the Council's stance was based on current policy. In addition, the Council undertook a planning balance of the harm and the benefits of the proposal.
21. The Draft PPS was not provided as part of the questionnaire documents expected from Local Planning Authorities at the outset of the appeal process. Additionally, it was not provided at the Statement of Case stage but was mentioned²: 'the Council will rely on the PPS at the inquiry to show that there are identified deficiencies in pitches across the main pitch sports, which are projected to increase over future years'.
22. Latterly the Draft PPS was also referred to in the Council's Proof of Evidence but then only Part D was provided. The other parts explain the context for Part D and needed to be considered. In any event, such documents need to be read and appreciated as a whole.
23. The Appellant was not able to consider the Draft PPS when preparing evidence on the first reason for refusal, which was relevant to their stance of assessing current availability of pitches as well as future prospects. This must have hampered their preparation.

² Paragraph 3.8

24. To check if the entire document could be produced, an adjournment had to be made to the Inquiry. The Appellant's barrister and witness(es) then needed to consider their position, and the PPS evidence was not wholly provided until late in the Inquiry sitting and the relevant witnesses had given evidence. This hampered the Inquiry proceedings: cross examination had to be paused several times, the Appellant needed to digest new evidence, and the Inquiry was delayed.
25. The Draft PPS needed to be considered as a whole to inform the current provision and future prospects, as well as how much weight it should be given.
26. The Appellant submitted a FOI request which was an understandable approach bearing in mind the earlier failure to see the document. Although another Council team dealt with that FOI, it would have been easy to e-mail other departments to check its potential significance, which would be good general practice. Moreover, the Council concluded that it was intended for future publication, and it is not clear whether that decision was from the FOI team on its own. In any event, publication would place it in the public domain anyway, so it is not clear why it could not have been released. If it needed to be caveated to highlight its draft nature, that could have been easily done.
27. The Council refer to the Appellant's mention of the Prospect House scheme and the contribution of 3G pitches. I note such submissions but in the absence of a counter- application these do not affect my decision.
28. I acknowledge the Appellant's comments about the costs response trespassing onto the main decision. However, I have considered the main decision on the evidence before the Inquiry.
29. I therefore find that the failure to disclose the entire Draft PPS document at the outset of the appeal process was unreasonable behaviour, that also resulted in unnecessary and wasted expense: requiring additional time in the preparation of evidence and prolonging the Inquiry.

Costs Order

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 Southampton City Council shall pay to Sovereign Network Group, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the additional time in the preparation of evidence and delays to the Inquiry due to the late disclosure of the full Draft Playing Pitch Strategy; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Southampton City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Longmuir

INSPECTOR