



Costs Decision

Inquiry held on 1 to 3 and 9 to 11 April 2025

Site visit made on 10 April 2025

by **O S Woodward MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19th May 2025

Costs application in relation to Appeal A - Ref: APP/Q3115/W/24/3353533

Land at Bayswater Farm, Bayswater Farm Road, Oxford, OX3 8EB

- 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 Cildara Group (Headington) Ltd for a full award of costs against South Oxfordshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for up to 121 dwellings and a care home, including open space and green infrastructure.
-

Costs application in relation to Appeal B - Ref: APP/G3110/W/24/3353532

Land at Bayswater Farm, Bayswater Farm Road, Oxford, OX3 8EB

- 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 Cildara Group (Headington) Ltd for a full award of costs against South Oxfordshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for up to 121 dwellings and a care home, including open space and green infrastructure.
-

Costs application in relation to Appeal C - Ref: APP/Q3115/W/24/3354458

Land at Bayswater Farm, Bayswater Farm Road, Oxford, OX3 8EB

- 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 Cildara Group (Headington) Ltd for a full award of costs against South Oxfordshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for up to 76 dwellings and a care home, including open space and green infrastructure.
-

Costs application in relation to Appeal D - Ref: APP/G3110/W/24/3354459

Land at Bayswater Farm, Bayswater Farm Road, Oxford, OX3 8EB

- 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 Cildara Group (Headington) Ltd for a full award of costs against South Oxfordshire District Council.
 - The inquiry was in connection with an appeal against a failure to give notice within the prescribed period of a decision on an application for planning permission for up to 76 dwellings and a care home, including open space and green infrastructure.
-

Decision

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

Background

2. The costs application was submitted in writing by Cillarda Group (Headington) Ltd (the applicant) on 11 April 2025. A response was made in writing by South Oxfordshire District Council (SODC) on 23 April 2025. A further written response was submitted by the applicant on 28 April 2025.
3. Whilst Appeals B and D were made against Oxford City Council (OCC), the costs application was solely made against SODC but in relation to all four appeals.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, 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.

Unreasonable behaviour

Principle

5. The appeal site is allocated for housing. However, this does not mean that any major housing development must inevitably be granted planning permission. The specifics of the case must still be considered. With regard to the Scheme A proposal, as can be seen by the fact I dismissed the appeals in relation to this scheme, it was self-evidently reasonable behaviour on behalf of SODC to object to the proposal, and the Inquiry was not wholly unnecessary.
6. My dismissal was based on the 'tilted balance' and I considered that the level of harm from Scheme A significantly and demonstrably outweighed the benefits. SODC's behaviour was therefore also reasonable, in-principle, with regard to the lack of a five year supply of housing land.
7. Scheme A is materially larger than Scheme B and raises a number of different considerations, particularly regarding ecology and character and appearance. Each scheme must be considered on its own merits and not in comparison to one another and SODC behaved reasonably, in-principle, in disputing the Scheme A proposal even after removing its objections to Scheme B.
8. The appeal site is an important part of the spatial strategy for both Councils. However, this is not a green light for development of any scale. As set out in my Decision¹, either Scheme A or Scheme B met the spatial strategy, and SODC did not contest the Scheme B proposal. This was reasonable behaviour.
9. As set out in detail in my Decision², the outline permission is the planning permission. It must be established that the quantum of development set out at the outline stage could be satisfactorily accommodated on the appeal site. For Scheme A, there was reasonable doubt in this regard, as made clear by my decision to dismiss the appeals in relation to the scheme. SODC were, therefore, acting reasonably, in-principle, in disputing the Scheme A proposal.

¹ DL90

² DL49 to 53

Specifics

Blinds

10. Although I have concluded otherwise³, there is reasonable doubt regarding the maintenance of the automated blinds. Due to the likely significant effect on living conditions⁴, it is also a reasonable position to take, even if I did not do so myself, that the future occupiers might not be incentivised to report problems, or might even try to deliberately break the blinds. This is irrespective of the approach taken by other Councils, which related to student housing which is a poor comparator to the proposed traditional residential. As set out in my Decision⁵, no evidence was provided by the appellant of a layout for Scheme A that could avoid use of the blinds. SODCs evidence was consistent in acknowledging the condition but whilst raising concerns with its enforceability. In any event, this is not an issue that was readily resolvable by condition. SODC therefore behaved reasonably in maintaining its objections in this regard.

Landscape

11. The density to the northern edge for Scheme A would result in greater landscape and visual effects. There is only half a threshold of difference between the landscape effects assessments of SODC and the appellant. However, the thresholds are relatively wide and this can still lead to a materially different measurement of harm. In addition, different scales of measurement were used, the scale of the visual envelope was different, and the approach to receptors and viewpoints was different. Therefore, it is difficult to make a precise and direct comparison between the thresholds used to assess the landscape harm. There would be harm to landscape and the harm from Scheme A would be greater than Scheme B. Overall, I assess the approach of SODC in regard to landscape to have been reasonable.

Design detail

12. With regard to the approach to the part of the site adjacent to the countryside, Scheme A gave rise to a design approach that, on the basis of the only material submitted to the appeal, relied on higher density to the north of the appeal site. I found this to be acceptable⁶ but this was despite a conflict with part of Policy STRAT13 in the Local Plan⁷. It is plainly reasonable behaviour to object to a proposal that results in conflict, even if limited, with the Development Plan.
13. SODC also maintained objection on the grounds of back-to-back distances, retaining walls, the location of the LEAP, the possible flooding of the path to the LEAP, and street trees. The applications were made in outline but it is a reasonable approach to consider whether the quantum of the development proposed would be acceptable. The illustrative material can be used to form part of this assessment. However, appropriate leeway must be given to matters of design detail otherwise it is effectively a requirement for a defacto full planning application to be made.

³ DL39

⁴ DL44 to 48

⁵ DL51

⁶ DL27

⁷ DL35

14. In this regard, it was shown at the Inquiry that the back-to-back distances would likely be acceptable. Street trees are shown on the illustrative masterplan and there was no reasonable basis for concluding that adequate numbers of street trees could not be accommodated. In fact, the position of [REDACTED] that tree locations should be coordinated with underground services and lighting at an early stage is a clear example of expecting a level of detail that should only reasonably be expected at full application stage.
15. I have assessed the proposal to be unacceptable with regard to the approach to the northern part of the site and the ecological mitigation measures⁸. However, this was because I found it to not be possible to respond to the ecological constraints whilst retaining the quantum of homes proposed and with an acceptable overall design. In comparison, with regard to the detailed design measures discussed above, the topography is relatively challenging but there is no reason to believe that retaining walls could not be successfully incorporated into the design, including around amenity spaces. In addition, the changes to the design necessary to accommodate changes to the LEAP and path, back-to-back distances and street trees would be relatively minor. Therefore, in these regards I am not persuaded that the quantum of development proposed gives rise to such constraints that a suitable design solution could not be found at reserved matters stage.
16. SODCs behaviour was therefore unreasonable in this regard.

Wasted expense

17. The Council's approach to matters of detailed design, but not landscape nor the approach to the blocks to the north for Scheme A, was unreasonable. I acknowledge that there was significant overlap between the landscape and detailed design evidence at the Inquiry, and that not all the detailed design evidence was unreasonable. Disentangling the specific elements of the unreasonable bits of detailed design from the rest of the evidence is therefore difficult. Nevertheless, it did result in the appellant responding to those matters both in the production of evidence and by witnesses at the Inquiry. The unreasonable behaviour therefore gave rise to wasted expense.

Conclusion

18. I therefore find that unreasonable behaviour by SODC resulting in unnecessary or wasted expense, as described in PPG, by the applicant has been demonstrated and that a partial award of costs is justified, solely in relation to evidence with regard to detailed design other than higher density to the north of the site. For the avoidance of doubt, this also excludes landscape evidence, anything regarding the principle of development, and the approach to ecological mitigation/blinds.

Costs Award

19. 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 South Oxfordshire District Council shall pay to Cillarda Group (Headington) Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with detailed design other than higher density to the north

⁸ DL49 to 53

of the site; such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. The applicant is now invited to submit to South Oxfordshire District 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.

O S Woodward
INSPECTOR