



Costs Decision

Inquiry held between 5 February 2025 and 6 March 2025

Site visit made on 5 and 7 March 2025

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th August 2025

Costs application in relation to Appeal Ref: APP/A1910/W/24/3345435

Land west of Leighton Buzzard Road, Hemel Hempstead HP1 3LP

- 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 Fairfax Strategic Land (Hemel) Ltd for a partial award of costs against Dacorum Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development proposed.
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Decision

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

The submissions for Fairfax Strategic Land (Hemel) Ltd

2. The application for a partial award of costs on procedural grounds was submitted in writing. The applicant believes that the Council introduced an unexplained reason for refusal in relation to landscape character and appearance almost 10 months after the original decision notice, 1 week before proofs of evidence were due, despite having confirmed multiple times that there are no unacceptable impacts on the character and appearance of the landscape and visual environment.
3. The applicant has set down a chronology of the events they believe are relevant to their claim of unreasonable behaviour on the Council's part. They highlight that in adding landscape character and appearance to the list of main issues, the Inspector appointed at that time had reminded the parties of her power to initiate an award of costs against the Council.
4. The applicant has pointed out that even after the Council's landscape witness had visited the site and provided her report, the Council had remained of the opinion that it did not wish to raise landscape and visual issues as a reason for refusal.
5. The applicant has highlighted that during cross-examination, the Council's witnesses confirmed that there were no relevant 'on the ground' or policy changes to support the Council's position on landscape and visual matters. The applicant also draws attention to the fact that the Council's planning witness agreed that the Council reversed its position between July and September 2024; has offered no reason why; and that the consequence has been spending much inquiry time dealing with it. Moreover, they assert that Council's planning witness agreed the circumstance is a 'textbook' example of unreasonable behaviour described by the Planning Practice Guidance (PPG).

The response by Dacorum Borough Council

6. The Council's rebuttal was made in writing. In it, the Council states that the landscape issues were raised as a concern from the very outset in the Officer Report [CD 2.2] which clearly identifies landscape and visual concerns in a number of places and in terms strong enough to suggest a separate reason for refusal. The Council points out that these concerns were followed through in the Council's Statement of Case [CD3.2] and the harm was afforded substantial negative weight.
7. The Council advises that they do not benefit from in-house landscape expertise and needed to have the landscape findings set out in the Officer Report reviewed by an expert. Due to the Council's concerns, landscape was intended to be the subject of evidence at the Inquiry with witnesses to be called on both sides.
8. The Council argues that the first Inspector appointed was content for the matter of landscape character and appearance to be the subject of evidence without a formal reason for refusal being added. They draw attention to the fact that the note of the first Case Management Conference held on 2 August 2024 acknowledged that landscape was possibly going to be a main issue for the Inquiry, subject to ongoing discussions, despite there being a no dedicated landscape or character and appearance reason for refusal at that time. The Council maintains that following email exchanges, the position on 23 August 2024 was that landscape was to be a topic for discussion at the Inquiry with evidence from both the main parties but without a landscape reason for refusal. The Council maintains that was not an unreasonable position and, importantly, it appeared to have been acceptable to that Inspector.
9. The Council points out that the subsequent Inspector appointed required that a landscape reason for refusal be submitted to the Inquiry in the circumstances. The Council believes that had they not done so, its concerns about the landscape and visual impact of the proposals would have gone unaddressed at Inquiry.
10. The Council maintains that their landscape evidence was shared soon after it was produced and that it built upon the advice note of their landscape witness. The Council also highlights that the applicant's landscape witness was instructed to prepare landscape evidence and appear at the Inquiry as early as Spring 2024. At that point she had already reviewed the Officer Report and the submitted Landscape Visual Impact Assessment, having been first approached by the appellant in January 2024. The Council argues that it is therefore clear that the applicant was preparing evidence and intended that their landscape witness would attend the Inquiry long before the supplementary landscape reason for refusal was issued.
11. Overall, the Council maintains that it is not unreasonable to have introduced a late supplementary reason for refusal in the circumstances and given what then preceded, it could not have been a surprise the appellant. Nor does the Council consider that such an action has resulted in unnecessary or wasted expense.

Reasons

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

13. Article 35(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 states that where planning permission is refused, the notice must state clearly and precisely their full reasons for refusal, specifying all policies and proposals in the development plan which are relevant to the decision. This is reiterated by the PPG.
14. The Planning Inspectorate's Procedural Guide: Planning Appeals – England requires the submission of a full statement of case containing all the details and arguments and must set out both the planning and legal arguments which the Local Planning Authority is putting forward as to why they consider planning permission should be refused.
15. Furthermore, the PPG cites examples of unreasonable behaviour as including the introduction of fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not have arisen; and prolonging the proceedings by introducing a new reason for refusal.
16. My predecessors clearly responded to the situation concerning landscape character and appearance matters as it was put to them at the time. Indeed in recognising the interplay between this supplementary matter and some of the formal reasons for refusal, clarity was sought on the scope of the Council's case. Crucially, in accepting landscape as a main issue in the appeal, my immediate predecessor did so having warned the Council of the potential for costs being awarded against them.
17. The Council clearly introduced a supplementary reason for refusal on landscape character and appearance grounds. They did so in the knowledge that the PPG requires any decision notice to include a full and precise articulation of its reasons for refusal and the risk of costs being awarded against them. This action was taken by the Council despite the Landscape Statement of Common Ground having initially confirmed that there were no unacceptable impacts on the character and appearance of the landscape and visual environment.
18. Moreover, the supplementary reason for refusal was introduced at a date substantially beyond the date the decision notice was published and well within the period leading up to the previously scheduled inquiry sessions.
19. By the point of my appointment to the Inquiry, landscape and visual considerations had been accepted by the main parties as a main issue for the appeal; witnesses corralled; and all evidence prepared on that basis to be presented under cross-examination.
20. By then, the Council's revised stance had already caused the applicant's witness to upgrade and expand upon what would otherwise have been able to be a much more narrowly focused written proof evidence in response to matters pertaining to the setting of heritage assets, the Green Belt and the statutory duty for National Landscapes.
21. Furthermore, the change in the Council's position led to 2 full days of evidence giving and cross-examination and time was expended in preparation for that and the site visit. After hearing this and conducting my site visit, I concluded that the appeal proposal would cause limited and localised harm to landscape character and appearance which will not transpose as harm to the Chilterns National Landscape. Whilst an unfavourable matter for the planning balance, it is not an

issue which has been determinative to the appeal. In that sense, my findings are not inconsistent with the Council's initial assessment outcome which informed the scope of the original reasons for refusal set out in the decision notice.

22. For all of these reasons, unreasonable behaviour resulting in unnecessary and wasted expense has occurred in respect of the preparation and giving of evidence relating to the matters pertaining directly to the supplementary landscape character and appearance reason for refusal and a partial award of costs is therefore warranted.

Costs Order

23. 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 Dacorum Borough Council shall pay to Fairfax Strategic Land (Hemel) Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the appellant responding to the supplementary landscape character and appearance reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Dacorum Borough 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.

C Dillon

INSPECTOR