



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 Hertfordshire County Council for a partial award of costs against Fairfax Strategic Land (Hemel) Ltd.
 - 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 refused.

The submissions for Hertfordshire County Council

2. The costs application was submitted in writing. The application was made following the appellant's refusal to include individual liability for all obligations, and notably the financial obligations entered into in favour of the County Council under a section 106 legal agreement.
3. In summary, unreasonable behaviour is claimed because the County Council considers that there has been a resistance to, or lack of co-operation on the appellant's part in providing information, discussing the application or appeal in relation to the drafting of a section 106 agreement.
4. The County Council believes that the appellant has sought, by maintaining its position, to place additional unnecessary expenditure on the public purse.
5. They also claim that the appellant has provided information to the appeal about the disputed liability clause that is manifestly inaccurate or untrue.
6. The partial award sought relates to the costs in the negotiation and preparation of documents pursuant to section 106 of the Town and Country Planning Act (1990). This includes the costs of preparing for and attending the round table session.

The response by Fairfax Strategic Land (Hemel) Ltd

7. The response was made in writing.
8. In summary, the appellant draws attention to the fact that in general, all parties to an appeal are expected to behave reasonably to support a timely and efficient process.

9. The appellant notes that the County Council's costs application was first advertised by email on 6 March 2025, the day after the round table at which the planning obligations were discussed. The prospect of an application was not aired at the round table session and nor did they inform the appointed Inspector that they were going to make a costs application before closings were heard, as envisaged by Planning Practice Guidance (PPG).
10. The appellant asserts that the costs application is simply an attempt to re-air the points which the County Council made at the round table session and does not disclose any unreasonable behaviour on the appellant's part and as such the costs claim against them should be refused.
11. In particular, the appellant highlights that given the County Council's claim is based on a procedural ground and the alleged unreasonable behaviour must relate to behaviour in relation to completing the appeal process. However, the substance of the County Council's claim focusses on substantive matters regarding the merits of the appellant's position on the section 106 legal agreement.
12. The Appellant points out that contrary to the County Council's assertions, that they have engaged in negotiations on the section 106 agreement since July 2024 and have submitted drafts of it to the inquiry in accordance with the Inspector's timetable, including in circumstances where the County Council had failed to provide comments in time. The appellant firmly maintains that there has been no lack of cooperation insofar as negotiations are concerned, nor did they refuse to negotiate wording on the disputed clause. The applicant considers that this is amply demonstrated by both parties' submitted chronology.
13. The appellant firmly maintains that there has been no resistance to, or lack of cooperation in relation to the disputed point of liability. They draw attention to the fact that they have explained their position many times; equally, the County Council maintained its position throughout negotiations. The appellant highlights that the County Council failed to mention the relevant Chiswell Green Decision¹ or to consider its position in light of that. It is argued that the fact the parties have been unable to reach agreement on the matter of individual liability does not mean that the appellant has behaved unreasonably.
14. The appellant argues that in order to make out substantive unreasonableness, by analogy, the County Council will have to demonstrate that the appellant's position in relation to individual liability had no reasonable prospect of succeeding and is unarguable. They maintain that it is irrelevant that other developers may have accepted the County Council's position on other appeals; the question is whether the appellant's stance on this appeal was unreasonable. They argue that simply cannot be the case, in light of the Chiswell Green Decision and the findings of the Inspector and Secretary of State concerning the County Council's standard wording in that case.
15. The appellant reaffirms, as explained at the round table session, that the County Council's preferred wording is not appropriate here because references to limiting and restricting occupation of dwellings against individuals does not make it clear whether or not the County Council could still enforce against individuals. They point out that there is no confirmation from mortgage lenders that the market position is not as the appellant has set it out. They also point out that in any event, now the

¹ Ref: CD 8.28

- unilateral undertaking contains a blue pencil clause, they are entitled to put forward its preferred wording.
16. The appellant firmly states that as to the inclusion of a 'blue pencil' clause, the County Council is attempting to elevate a passing observation of the Inspector in the Chiswell Green appeal into a procedural rule. The appellant highlights that there is no bar to parties who are unable to agree a particular provision of a section 106 raising the matter before an Inspector at an inquiry regardless of whether that provision concerns substantive obligations or other provisions.
 17. The appellant maintains that the purpose of a round table session is for each party to present its position, to allow the Inspector to determine the issue, not an attempt to reach agreement on the wording of the section 106 obligation. The blue pencil clause is the mechanism by which the Inspector may make that determination.
 18. The appellant states that for the purpose of this appeal, it has to be assumed that the County Council will enforce any planning obligation to which it is party. If the developer sells dwellings in breach of its obligations, it is for the County Council to take enforcement action at that stage against the land owner (whether the original developer or its successor) and thereby protect itself from any risk. However, the County Council's indication that it would not, in fact, seek to enforce against individual occupiers means that their argument about placing additional unnecessary expenditure on the public purse goes nowhere.
 19. The appellant maintains that it accepts that it is liable to pay the County Council's reasonably incurred costs and provided an undertaking to that effect, up to the sum of £12,000, on 21 January 2025. They dispute that they have refused to provide any increased undertaking since 7 January 2025. They confirm that the County Council's request was not accepted for the reasons set out in the note provided to the Inquiry² and the County Council has not provided any satisfactory explanation as to why the extensive increase in costs sought is justified.
 20. In terms of the argument that the County Council is entitled to its costs of preparing for and attending the round table session, the appellant states that the County Council was not summoned to the inquiry and so section 250(2) Local Government Act 1972 has no application here. The County Council attended the round table session to explain its position to the Inspector, which it voluntarily and properly did. The appellant points out that the first time that wording was discussed was at the round table session. It is untenable to the appellant to suggest that their behaviour necessitated the round table session.
 21. The appellant points out that there is no rule that a party who attends a round table session in these circumstances should have its costs met by the appellant at a planning inquiry, and for good reason: such a rule would prevent the fair negotiation of planning obligations by incentivising appellants to agree to unsatisfactory wording to avoid further costs exposure.
 22. Finally, the appellant argues that the application made by the County Council against them is a further example of unreasonable behaviour on the part of the County Council.

² Ref: ID8

Reasons

23. In general, all parties to an appeal are expected to behave reasonably to support a timely and efficient process. They 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.
24. The Appeals section of the PPG states that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It cites examples of unreasonable behaviour which may result in a procedural costs award against a local authority. This includes a lack of co-operation with the other party or parties. The examples cited in the PPG in both respects are non-exhaustive.
25. In assessing the appellant's separate costs claim of unreasonable behaviour on the County Council's part, I have found that the chronology of events before me demonstrates a clear unwillingness on the County Council's part to engage constructively with the appellant to reach a compromise to assist my adjudication on the disputed point. In determining the appeal which gave rise to this application for costs, I rejected the County Council's approach to liability for necessary planning obligations for the reasons set out in my Decision. Had the appellant not been tenacious in its resolve to provide a legal agreement with the particular blue pencil clause, then appeal would have failed, and delivery of much needed housing would have been delayed.
26. Given the basis of the County Council's own application for costs against the appellant, the alleged unreasonable behaviour must relate to behaviour in completing the appeal process. However, the substance of the County Council's claim focusses on the merits of the appellant's position.
27. From the chronology put before me it is clear that the appellant has engaged in negotiations on the legal agreement since July 2024 and has submitted drafts of it to the Inquiry in accordance with the Inspectors' timetable; including in circumstances where the County Council had failed to provide comments in time. In doing so, there is no evidence of a lack of cooperation on the appellant's part insofar as negotiations are concerned, including in relation to the disputed point of liability.
28. The appellant has explained their position many times; equally, the County Council maintained its position throughout negotiations. It is part of the course with appeals that matters may remain in dispute. I accept that a party is entitled to maintain a particular stance on the drafting of legal agreements.
29. However, the County Council has not demonstrated to me that the appellant's position in relation to individual liability had no reasonable prospect of succeeding and is unarguable. The fact the parties have been unable to reach agreement on the matter of individual liability does not in itself mean that the appellant has behaved unreasonably, particularly in light of the findings of the Inspector and Secretary of State on the Chiswell Green Decision concerning the County Council's standard wording.

30. The County Council has attempted to elevate a passing observation of the Inspector in the Chiswell Green appeal into a procedural rule. However, there is no bar to parties who are unable to agree a particular provision of a legal agreement raising the matter before an Inspector at an inquiry, regardless of whether that provision concerns substantive obligations or other provisions.
31. Furthermore, the County Council has not demonstrated that the fact that other developers may have accepted their position on other appeals, given the apparent differences between the Tring³ and Chiswell Green Decisions, is a basis to claim unreasonable behaviour on the appellant's part. Other section 106 agreements may make different provisions regarding individual liability. However, the motivation of an appellant to agree to the County Council's wording; what subsequent 'workarounds' were required; and the issues that drafting may have caused on financing of the site or for individual purchasers, have not been disclosed to this Inquiry.
32. The County Council was not summoned to the Inquiry and so section 250(2) Local Government Act 1972 has no application here. The County Council attended the round table session to explain its position to me, which it voluntarily and properly did. There is no rule that a party who attends a round table session in these circumstances should have its costs met by the appellant at a planning inquiry, no doubt for good reason.
33. The purpose of a round table session is for each party to present its position, to allow the Inspector to determine the issue. Whilst at times concessions will be made, it is not an efficient use of Inquiry time to rely upon such sessions as the arena for reaching agreement on a technical matter such as the wording of a legal agreement. Rather, the blue pencil clause is a pragmatic mechanism by which the Inspector may make that determination based on the evidence put before them. As such, the County Council's attendance was not a result of any unreasonable behaviour on the appellant's part.
34. The appellant accepts that they are liable to pay the County Council's reasonably incurred costs and provided an undertaking to that effect. It is simply a case that the County Council has not provided any satisfactory explanation as to why the extensive increase in cost sought thereafter is justified. That is not an unreasonable expectation of the appellant.
35. For all of the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense for the County Council as applicant has not occurred and an award of costs is not warranted.

C Dillon

INSPECTOR

³ Ref: APP/A1910/W/22/3309923