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## Costs Decision

Site visit made on 2 September 2025

by **T Bennett BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30<sup>th</sup> September 2025

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### **Costs application in relation to Appeal Ref: APP/A1910/W/25/3366214**

#### **Land east of Green Lane, Hemel Hempstead AL3 7AP**

- 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 Mr Joel Merris (on behalf of Vistry Homes Ltd and Richard Blair) for a full award of costs against Dacorum Borough Council.
  - The appeal was against the refusal of the Council to grant planning permission for change of use from agricultural land to Suitable Alternative Natural Greenspace (SANG) with associated access and car park.
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### **Decision**

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

### **Reasons**

2. 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. The costs application has been predominantly made on substantive grounds relating to the issues arising from the merits of the appeal.
3. The application for costs is based on the fact that Council Officers recommended approval for the proposal, but that Council Members acted unreasonably by taking a different course of action without adequate reasons to do so given that all issues had been resolved by both the appellant and all relevant statutory consultees, leading to the applicant incurring costs associated with an unnecessary appeal.
4. Whilst Planning Committee members took a contrary view to the officer recommendation, there are not duty bound to follow the officer recommendation. If a different decision is reached, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.
5. The Council's stated reason for refusal was that they considered the proposal would not provide safe and satisfactory means of access for all users. This was based on a combination of factors: the location of the site, the nature of the road, flood risk and lack of pedestrian access, with the relevant development plan policies cited.
6. The applicant considers that the reason for refusal could be distilled into four separate topics. These being the suitability of the appeal site for the SANG, whether the appeal scheme provides a safe and satisfactory means of access,

- accessibility of the site for non-car users and flood risk on the appeal site and adjacent land arising from the SANG.
7. Part of the Council's concern related to the *existing* (my emphasis) risk of flooding on Gaddesden Lane, with concern that this would prevent safe access to the site. Whilst several photos were submitted showing surface water flooding on Gaddesden Lane, there was very little information with regards to the frequency and extent of such flooding or any robust technical evidence to back up these concerns.
  8. The submitted flood risk assessment and drainage strategy for the SANG showed that the proposed mitigation measures would ensure any flooding could be successfully mitigated and that the scheme would result in a betterment in relation to any surface water flooding on Gaddesden Lane. The Lead Local Flood authority also did not object to the proposals.
  9. Even though the Council did not identify flooding as an issue in isolation, it nevertheless formed part of the reason for refusal, in combination with other factors. Given the evidence, I find that the Council behaved unreasonably on refusing the scheme with regard to this particular issue, leading the applicant to unnecessary expense in defending the scheme on the issue of flooding.
  10. I acknowledge that Natural England raised no objection to the application and were satisfied that the site could function as a SANG, meeting all of the SANG criteria. In terms of access, the SANG criteria only required a safe access route on foot from the nearest car park and/or a footpath. Given a carpark would be provided, access from the carpark into the SANG was deemed acceptable.
  11. Hertfordshire Highways also did not object to the proposal, finding that the proposed access and increased trips would not have an unreasonable impact on the safety and operation of the adjoining highway. However, they did acknowledge that Gaddesden Lane does not have any footways, either fronting the site or linking to nearby public rights of way, and therefore would not necessarily consider the site accessible to walk for all users.
  12. Although Hertfordshire Highways and Natural England had no objections, and the primary target of the SANG is car users, people may still choose to arrive on foot. Given the narrow road, lack of pavement, and that the SANG would not be directly connected to a public right of way (PROW) pedestrians would have to walk along the roads to access the site. It was therefore not unreasonable for members to consider whether the development would provide safe access for all users, including pedestrians, regardless of the SANG being deemed an appropriate location by Natural England, as development plan policy seeks this. It was therefore a planning judgement based on the policy requirements.
  13. The applicant argues that two other SANGs with no direct foot access have been approved by the Council. However, from the limited information before me, these both appear to have PROW running across the sites, these therefore are not directly comparable to the SANG proposed in this case, and it does not demonstrate that the Council has been inconsistent in its approach to decision-making. Each case is determined on its own merits.
  14. Finally, the applicant considered members acted unreasonably by relying on planning officers to draft the reason for refusal. However, the meeting minutes

demonstrate that the reason for refusal does relate to the issues that members raised during the discussion at the committee meeting. I do not consider that members *relied* on officers to establish the reason for refusal, but rather sought support as to how their concerns could be formulated into a reason for refusal against relevant development plan policies. This does not point to unreasonable behaviour which has led to the applicant incurring unnecessary or wasted expense in the appeal process.

15. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated with respect of flooding and that a partial award of costs is justified in this case.

### **Costs Order**

16. 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 Mr Joel Merris (on behalf of Vistry Homes Ltd and Richard Blair), the partial costs of the appeal proceedings described in the heading of this decision limited to those costs associated with producing the Flood Risk Position Statement – Technical Note (April 2025); such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. 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.

*T Bennett*

INSPECTOR