



Costs Decision

Hearing held on 4 September 2025

Site visit made on 4 September 2025

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2025

Costs application in relation to Appeal Ref: APP/Z5630/W/25/3364278

28-46 Cromwell Road, Kingston Upon Thames KT2 6RJ

- 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 Ms Emma White, Aroch Limited for a full award of costs against Royal Borough of Kingston Upon Thames.
 - The appeal was against the refusal of planning permission for 'demolition of existing buildings and redevelopment of site to provide a building comprising part one, two, four, five, six and seven storeys in height (including a basement) incorporating residential units, a replacement childrens nursery (Class E(f)), a community use space (Class F1 and F2) and associated Blue Badge parking, cycle parking, refuse storage, plant, landscaping and amenity space' without complying with conditions 1 and 44 attached to planning permission Ref 21/01086/FUL, dated 25 November 2022.
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Decision

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

Procedural Matters

2. The application for costs was submitted in writing during the Hearing. As I agreed with the parties, the Council's response to the application and final comments for the applicant proceeded through written submissions following the close of the Hearing. Because the submissions were made in writing, they are a matter of record and it is not necessary to rehearse them here.

Reasons

3. The appeal in this case results from the Council's refusal of an application made under s73 of the Town and Country Planning Act 1990, effectively seeking to vary planning permission previously granted on the site ('the Parent Permission'). The Council gave two reasons for refusing the application which broadly concern the loss of hostel and nursery space (Reason for Refusal 1) and provision for affordable housing (Reason for Refusal 2).
4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('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.
5. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples given in the PPG of behaviour that may give rise to a substantive award

against a local planning authority include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; a failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

6. The applicant states in their application that it was made on substantive rather than any procedural grounds. Nevertheless, the submissions include matters which would relate more clearly to examples given in the PPG of behaviour that may give rise to a procedural award against a local planning authority. In particular, examples referring to a lack of cooperation with the other party and delay in providing information or other failure to adhere to deadlines.
7. During the Hearing, the Council was represented by an officer who I understand was relatively new to the authority. Neither the case officer who had dealt with the appeal and Parent Permission applications and prepared the appeal statement nor the Head of Service who had been involved in correspondence on the scheme were present. However, the Council indicates that the previous case officer had retired. That they did not attend is not therefore unreasonable. Moreover, it is a matter for the Council how it chooses to resource an appeal and present their case, as long as it does so reasonably.
8. The officer at the Hearing may not have been involved in writing the Council's appeal statement or have had direct knowledge of every aspect of the background and context to the case. In my experience however, it is not unusual for matters to arise during discussion at a Hearing that a party needs to consider further or seek clarification on, even where they may have been involved throughout the entirety of the preceding process. From the discussion during the Hearing, I am in no doubt that the attending officer had sought to properly familiarise themselves with the proposal and relevant material and I am satisfied overall that they were appropriately able to present and explain the Council's case. Consequently, the Council's arrangements in respect of attendance at the Hearing would not in my judgement amount to unreasonable behaviour as described in the PPG.
9. There was one specific instance during the Hearing where the Council's officer relayed a statement from a colleague not present in the room that former residents of a hostel on the site had not been provided with alternative housing. The point was then essentially withdrawn by the Council when it became apparent that it was contradictory to the position set out in the report on the Parent Permission scheme. I cannot say from the information before me that the initial suggestion was a deliberate attempt to mislead, rather than a genuine error or misunderstanding. However, even if I were to find the introduction of information which was later shown to be false to amount to unreasonable behaviour, it was as far as I am aware an isolated incident rather than part of a wider pattern of conduct during the Hearing. The applicant was able to quickly rebut the point during the discussion, and it did not cause any meaningful delay or prolonging of proceedings such that I can identify consequent unnecessary or wasted expense.
10. The applicant has also argued that the Council behaved unreasonably in refusing the application in the first place.

11. In relation to Reason for Refusal 1, there is dispute between the parties as to whether or not the loss of floorspace in hostel use would engage Policy DM 24 of the Core Strategy 2012 ('the CS'). The definition of community facilities in the CS does not include hostels or any form of housing, but it does refer to facilities provided by the community or voluntary sector and the examples given do not form a closed list. I have found in my appeal decision that Policy DM 24 should not apply to the hostel on the appeal site, but that reflects a matter of planning judgement and I find that it was not unreasonable for the Council to have reached a different view.
12. Moreover, the Council's objection to the loss of the hostel without mitigation did not hinge solely on Policy DM 24. It also referred to Policy DM 14 of the CS and Policies GG1, H8 and H12 of the London Plan 2021. The applicant did not dispute during the Hearing that these policies could be relevant to an assessment of the loss of the hostel, albeit that they did argue a lack of need and re-provision such that the loss would not cause harm or offend policies seeking broadly to resist loss of provision where there is an identified need.
13. However, whether or not there is an identified need for the hostel would again reflect a matter of planning judgement. Although the Council added little further detail or explanation on this matter during the Hearing, its written evidence included detailed comments from Adult Social Care and reference to research exploring housing provision in the Borough for rough sleepers and those at risk of rough sleeping with drug and alcohol issues. I am satisfied that overall, the Council provided appropriate, specific and relevant evidence to support its position that there remains a need for hostel floorspace. Indeed, I have also found in my appeal decision that while Cairn House hostel may have shut in 2021, there remains a need for hostel provision and I have concluded on the basis of the presented evidence that the loss of hostel space without mitigation would result in serious and substantial harm and conflict with a number of policies of the development plan.
14. Given the applicant's offer to reinstate a financial contribution secured in the Parent Permission towards supported living and outreach provision ('the SLO Contribution') and my findings notwithstanding the limited detail offered by the Council that the SLO Contribution would meet tests in the Community Infrastructure Levy Regulations 2010 (as amended) ('the CIL Regulations'), this matter has not ultimately led me to dismiss the appeal. However, the offer to reinstate the financial contribution was made as part of the appeal and the costs submissions do not give any clear suggestion that it would have been reinstated earlier given the opportunity. On that basis, I consider the Council's position in determining the application that loss of the hostel would cause unacceptable harm was reasonable and I am satisfied that it properly substantiated this aspect of Reason for Refusal 1.
15. Reason for Refusal 1 also refers to loss of community floorspace in the form of the children's nursery. In this respect, the applicant's appeal evidence included details of the availability of alternative childcare provision and evidence from the intended nursery operator on the suitability of the proposed space to support their case that the reduced nursery would be acceptable. This information was not before the Council at the time it determined the application. However, I understand that the Council gave no indication that loss of nursery floorspace was a concern with the proposal until after its decision on the application, effectively depriving the applicant of an opportunity to address this matter.

16. Moreover, the Council was informed that additional evidence provided by the applicant with the appeal had been accepted, but it did not engage with the evidence in respect of nursery provision in any meaningful way in its appeal statement, which simply asserted a further degradation in community floorspace with reference to the reduction in size of the nursery and external amenity space. Nor did it provide any compelling evidence during the Hearing to dispute the applicant's evidence on this matter or clearly demonstrate harm arising as a result of the reduced size of the nursery contrary to this evidence.
17. Given these factors, I consider the Council's assertions at appeal stage that there would be a degradation in nursery provision to be vague, generalised and unsupported by any objective analysis. This is an example of behaviour which the PPG notes may lead to an award of costs. Furthermore, it seems to me given the lack of substance in its appeal case on this point that the Council may not have raised the loss of the nursery as a concern had the applicant been afforded an opportunity to provide additional information at application stage.
18. Taking these factors together, I consider that the Council's Reason for Refusal 1 was reasonable and adequately substantiated in respect of the loss of the hostel. Nevertheless, the Council has behaved unreasonably in including and maintaining an objection to the loss of nursery floorspace within Reason for Refusal 1.
19. Insofar as the collation and presentation of the additional information relating to nursery provision that is included within the applicant's appeal statement would in any event have been necessary had they been able to provide it at planning application stage, costs associated with this work could not in my view be reasonably described as unnecessary or wasted. Had the Council behaved reasonably however, there would not have been a requirement for the applicant's team to spend subsequent time in preparing for and attending the Hearing in respect of the nursery floorspace matter. Costs that the applicant would have incurred as a result of this activity would therefore be unnecessary and wasted expenditure.
20. In respect of Reason for Refusal 2, the applicant had as part of the planning application proposed a financial contribution towards affordable housing on the basis that they had been unable to generate interest from Registered Providers of affordable housing ('RPs') in on-site units.
21. I have noted an assertion by the applicant that the Council did not accept the conclusion reached by Carter Jonas who carried out a review of the development's viability on its behalf that £585,926 was the maximum reasonable affordable housing provision assuming no on-site provision. From my review and understanding of the Council's evidence however, it does not reject this as the appropriate amount. Rather its concerns relate to whether a financial contribution would be justified in principle as a departure from the general expectation within development plan policies for on-site provision.
22. To my mind, this would be a matter for the planning authority rather than Carter Jonas who indicate that they have been engaged to undertake a detailed review of viability to determine the most viable position in relation to the level of affordable housing. There is no suggestion of their remit extending to consider matters beyond viability in respect of how affordable housing should be provided. Indeed, I note that as well as confirming a viable contribution amount in a scenario with no

on-site housing, the Carter Jonas Report specifically comments that its Scenario 1B comprising a 24% shared ownership scheme is also considered to be viable. It does not specifically recommend either option to the Council.

23. In my assessment, the Council's written submissions and its evidence at the Hearing in respect of Reason for Refusal 2 were clearly approached on the basis of whether there was justification for a financial contribution instead of on-site provision for affordable housing, rather than viability matters. I cannot agree with the applicant's suggestion that the Council has struggled conceptually to understand the Reason for Refusal.
24. Having found in my appeal decision that no affordable housing provision would be viable, it was not necessary to my assessment of the appeal to consider whether or not there was adequate evidence to justify a financial contribution rather than on-site provision. However, such an assessment would inevitably reflect matters of planning judgement.
25. In this case, the Council has not directed me to any specific policy or guidance in respect of the expected scope of information or timescales for engagement with RPs that the applicant had failed to meet or take account of. Neither has it positively demonstrated genuine interest from an RP or its own Housing department in on-site units. However, and irrespective of past discussions, the period of 7 days which the applicant gave RPs to respond to a request seeking expressions of interest for a scheme of 13 shared ownership dwellings in March 2025 was undoubtedly short. The accompanying information which referred to the planning application reference, assumed mix and assumed values was also comparatively limited. Furthermore, over two thirds of the organisations approached did respond which I consider a reasonable response rate, but it also leaves a fair number who did not respond and I cannot be certain that none would have been dissuaded from responding by the conditions of the request.
26. I appreciate the applicant's efforts to support their case, but the fact that the Council did not agree on this matter is not in itself evidence of unreasonable behaviour. Furthermore, I do not see that specific expertise would be necessary to consider the nature of engagement carried out by the applicant and so the fact that the Council had no additional representation at the Hearing from Carter Jonas, its Housing department or others is not in my view evidence of unreasonable behaviour. I have found in my decision on the Council's application for costs that the applicant's evidence was reasonable to support their position. Nevertheless, I consider on balance having regard to the above context that the Council's concern about the adequacy of the opportunity given to RPs to express interest was not in itself unreasonable. In my view, it provided adequate evidence to substantiate Reason for Refusal 2.
27. Furthermore, I note that the applicant had no real opportunity to specifically address the Council's outstanding concerns on this matter before determination of the application, but I am not persuaded given the positions at appeal stage that it would have been likely to reach a different view such that this reason for refusal could have been avoided.
28. In terms of overall planning balances, the Council's report on the appeal application explicitly refers to paragraph 11 d) ii) of the National Planning Policy Framework ('the Framework') being engaged in this case. Assessment under this

paragraph of whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole is a matter of planning judgement.

29. I have found above that the Council behaved unreasonably in including and maintaining an objection to the loss of nursery floorspace within its Reason for Refusal 1. However, I have found in my appeal decision that adverse effects stemming from the loss of the hostel without mitigation alone would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. Even if the Council had not objected to the loss of the nursery floorspace, I am not therefore persuaded that its overall position and decision to refuse the application was unreasonable.
30. In addition, while they made an offer to reinstate the SLO Contribution as mitigation for the loss of the hostel as part of the appeal, the applicant also sought to argue that this mitigation was not necessary or justified. For the reasons set out above and in my appeal decision, the necessity of mitigation is a matter of judgement and I have ultimately agreed with the Council that mitigation is necessary. That the Council maintained its objection to the applicant's position that no mitigation should be provided for loss of the hostel despite its offer to reinstate the SLO Contribution was not therefore unreasonable. I am further unable to agree with the applicant's suggestion that the Council's acceptance of the SLO Contribution would have rendered a large part of the proceedings unnecessary given their arguments both in their initial appeal statement and during the Hearing around the lack of justification for the contribution which I would have needed to explore in any event.
31. In defending its case, the Council could not be certain what view I would reach on whether the SLO Contribution would be required and consequently whether any affordable housing provision would be viable. It was not therefore unreasonable for it to maintain its concerns in respect of whether there was adequate justification to demonstrate that affordable housing could not be provided on site.
32. Notwithstanding my view on the Council's unreasonable behaviour in respect of nursery floorspace, I find for these reasons that the Council's decision to refuse the application was not in itself unreasonable overall. The appeal and hearing could not have been avoided, and the Council has not unreasonably prevented or delayed development which should clearly be permitted.
33. That said, I consider that some elements of the Council's behaviour following the refusal of the application and as part of the appeal process have also been unreasonable.
34. In particular, it is apparent from the evidence and copies of correspondence before me that the Council largely failed to engage in discussions with the applicant in respect of the planning obligation until very shortly before the Hearing. Despite the Council's assertion that it adhered in a timely fashion to all aspects of the application and appeal, the eventual response on the applicant's draft obligation was an amendment to a single word which was only provided some time after the deadline given in my pre Hearing Note for submission of an agreed draft.
35. No explanation has been provided of any reason for the delay and I consider the lack of timely and meaningful engagement on the planning obligation to constitute unreasonable behaviour on behalf of the Council. The preparation and review of a

planning obligation would have been necessary in any case. From the information before me however, the Council's behaviour caused the applicant to incur unnecessary expense in chasing a response and, with no response being forthcoming, having to consider and address multiple eventualities to deal with the consequent uncertainty over the position on the obligation.

36. In addition, I note that the Council had refused to agree the Statement of Common Ground ('SoCG') without the inclusion of 'whether the £750,000 contribution towards Supported Living and Outreach Provision in the Borough is sufficient to mitigate against the loss of Cairn House hostel' as a matter of dispute. However, the Council confirmed during discussion at the Hearing that the SLO Contribution would in fact address its concern over the loss of the hostel.
37. It suggested that the disputed matter in the SoCG related to the applicant's argument that the SLO Contribution was not necessary and the intention to reinstate the offer subject to a 'blue pencil' clause. However, this is certainly not clear from the wording of the disputed matter which indicates on a fair reading an issue with the sufficiency of the amount. From copies of correspondence between the main parties during negotiations on the Statement of Common Ground, the Council declined to explain the basis for this point to the applicant. The lack of cooperation and clarity from the Council on this point was in my view unreasonable.
38. I further have no firm reason to doubt that the ensuing uncertainty would have been a significant factor in the applicant's concern that discussion on disputed matters could be prolonged beyond the single day allocated for the Hearing. This, together with the Council's indication that the Hearing venue would not be available beyond 5pm and that it was unable to provide a space for a second day, led the applicant to take steps to arrange a venue for a second sitting day in order to enable completion of discussions without a potentially lengthy adjournment. On the day of the Hearing however, the Council indicated that the venue would be available well beyond 5pm. It is unclear why the Council had initially suggested otherwise.
39. I am in little doubt that the applicant would not have felt compelled to arrange a venue for a second day had the Council properly made its position including in respect of the SLO Contribution clear and given an accurate picture of venue availability. In my judgement, this amounts to obstructive and unreasonable behaviour by the Council which has caused the applicant to incur unnecessary and ultimately wasted expense in arranging a venue for a second day.
40. The Council also made a costs application against the applicant which I have considered in a separate decision. It confirmed during the Hearing that the costs application was a partial application in respect of Reason for Refusal 2 and the adequacy of evidence to demonstrate that the proposal could not provide on-site affordable housing. However, while the Council was entitled to exercise its judgement and conclude that the applicant's evidence was not sufficient in determining the planning application, the ability to make an application for costs should be exercised reasonably.
41. The Council's costs application made no reference to the PPG which specifically advises that an appellant is at risk of a substantive award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of

succeeding. It did not explain how the purported grounds related to behaviour which the PPG indicates may give rise to an award of costs, nor demonstrate clearly how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

42. Of course, a costs application need not be successful to be a reasonable application. Having had to consider the application in this case however, the purported grounds were in my view so lacking in any real substance or basis within the PPG that the Council could not rationally have expected them to stand up to scrutiny nor result in a conclusion that the grounds of appeal would have had no reasonable prospect of succeeding to the extent that I consider it was a spurious application which it was unreasonable to make. Indeed, the Council did not provide a response to the applicant's reply to the application raising concerns about its nature and reasonableness and the costs incurred in responding to it.
43. Regardless of the merits of the content, it is understandable that the applicant would want to respond to an application for costs made against it. This would not have been necessary had the Council not behaved unreasonably in making the application and so has resulted in further unnecessary expense for the applicant.
44. The Council did not confirm until the day before the Hearing that it would be represented only by the new case officer, after previously suggesting that other unnamed representatives might also attend. The applicant advises that the timing of the Council's confirmation of attendees left them no option but to maintain its full team. However, while they refer to bringing professional colleagues to the Hearing in anticipation of Council witnesses from Carter Jonas or RPs, I note that Turner Morum had provided evidence for the applicant around engagement with RPs as well as matters of viability. I have noted above that it was not in itself unreasonable that the Council was not represented by other parties in respect of RP engagement, and given the material to be discussed under my third main issue and Turner Morum's role, I am not persuaded that there is clear evidence to suggest that they would have been stood down if the Council had been clearer on its attendees earlier. Nor that the applicant was forced to field a larger team than would otherwise have been the case.
45. It would certainly have been helpful and courteous of the Council to confirm its attendees in good time as had been requested in my Pre Hearing Note, but I find no compelling evidence that the failure to do so has caused the applicant to incur unnecessary or wasted expense.
46. The applicant's submissions highlight a number of additional concerns including the adequacy of the Council's evidence relating to compliance with the CIL Regulations, reference to a non-existent committee report, that the Council sought extensions to deadlines and to alter the Hearing date, a failure to meet deadlines and a general lack of cooperation. However, even if I were to conclude that these concerns arose as a result of unreasonable behaviour by the Council, I do not find compelling evidence demonstrating consequent unnecessary or wasted expense for the applicant further to that already identified.

Conclusion

47. For these reasons, I find that the Council's refusal of the application was not necessarily unreasonable overall and a full award of costs is not justified. However, I have identified a number of specific aspects where unreasonable

behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. Accordingly, a partial award of costs is justified.

Costs Order

48. 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 the Royal Borough of Kingston Upon Thames shall pay to Ms Emma White, Aroch Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in:

- preparing for and attending the Hearing in respect of the element of the Council's Reason for Refusal 1 concerning the loss of community floorspace in the form of the nursery;
- pursuing a response to the draft planning obligation in the lead up to the Hearing and, during the period while no response was forthcoming, considering and addressing multiple eventualities as part of the obligation to deal with uncertainty;
- arranging and securing a venue for a potential second Hearing sitting day; and
- responding to the Council's application for costs;

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

49. The applicant is now invited to submit to the Royal Borough of Kingston Upon Thames, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Bowyer

INSPECTOR