



Costs Decision

Inquiry held on 14 to 16 October 2025 and 24 to 25 November 2025

Site visits made on made on 13, 14 and 16 October and 24 November 2025

by R Aston BSc (Hons), DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2026

Costs application in relation to Appeal Ref: APP/C4615/W/25/3368014 Former Kingswinford Youth Centre, High Street, Kingswinford, DY6 8AP

- 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 Churchill Living Ltd for a full award of costs against Dudley Metropolitan Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as 'demolition of the existing former youth centre and erection of 49 No. retirement living apartments with associated communal facilities, vehicular access, car parking and landscaping. Provision of a new multi-use games area and children's play area to the southwest of the existing former youth centre'.
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Decision

1. The application for an award of costs is refused.

The submissions for Churchill Living Ltd

2. The costs application was submitted in writing before the Inquiry. The appellant seeks its costs in full, from the submission of the appeal to the close of the Inquiry¹. By the time this Inquiry opened, the LPA had accepted that 7 of the 10 RFR were either not justified or could be dealt with by a completed section 106 agreement. Time has shown, as always contended by the Appellant, that this was a proposal that should never have been the subject of any appeal. The Appellant is an experienced, award-winning provider of older persons accommodation. The national need for such accommodation is described in National Planning Policy Guidance ("PPG") as "critical".

Reason 1 – Prevented development that having regard to the development plan and the PPG and NPPF should without question be permitted as a matter of urgency.

Reason 2 – Failed to produce credible evidence to substantiate each reason for refusal on appeal.

Reason 3 – Unreasonably defended this appeal by making vague, generalised or inaccurate assertions about this proposal's impact in respect of local character and heritage, which are completely unsupported by any objective analysis.

¹ The 11 pages of the application are not set out in full below and I have summarised the salient points.

- Reason 4 – The LPA is required to review and consider its case as the NPPG suggests and in the light of the LPA withdrawing 70% of its case it was required to undertake a new planning balance and there is no evidence that it has done so it has failed to comply with the PINS guidance.
3. The Appellant is a highly experienced, award-winning provider of older persons accommodation. The national need for such accommodation is described in National Planning Policy Guidance (“PPG”) as “critical”. This is a site which the LPA accept should be redeveloped and accept the proposed land use. Therefore, the starting point is the LPA accept there is a need to redevelop the site, and the proposed use is acceptable. This is the key regeneration area in Kingswinford where the LPA is promoting regeneration generally and has laid empty for over 10 years. This site is a massive resource for the LPA and in the light of their requirement for housing must be used efficiently and with an optimum output. The LPA have failed to deliver enough housing in the past and failed the HDT.
 4. Consequently, the tilted balance is in play which requires the LPA to show that the impacts of the development significantly and demonstrably outweigh the benefits of the proposal. Additionally, the LPA accept that there is a real and pressing need for specialist accommodation for the elderly in the SoCG. This proposal is for housing on an underutilised brownfield site which the NPPF directs should be given substantial weight and approved unless the proposal would cause substantial harm.
 5. Additionally, this is a proposal which lies four square within the emerging policy framework being promoted by the LPA elsewhere currently in the context of the EIP inquiry. It is the case of the Appellant that in considering this matter both at the local level and through their evidence at this appeal the LPA have materially ignored key government guidance which requires the following planning policy imperatives.
 6. It will be a judgment for the Inspector but the Appellant takes the view that the evidence of all 3 LPA witnesses and the delegated report materially ignored key parts of government policy in undertaking the planning balance in this matter unreasonably and if they had they would have concluded that the planning balance was in favour of granting planning permission and the appeal would have been avoided.
 7. In terms of the LPA impacts there are essentially five. It is contended that all are subject to the fair and objective criticism that they are only supported by vague, generalised and inaccurate assertions. Cumulatively therefore the 5 remaining concerns of the LPA simply do not justify objection let alone do they come close to significantly and demonstrably outweigh the very substantial benefits that Mr Mead himself accepts.
 8. The LPA is required to review and consider its case as the NPPG suggests and in the light of the LPA withdrawing 70% of its case it was required to undertake a new planning balance and there is no evidence that it has done so it has failed to comply with the PINS guidance. Good practice demands that every party to a planning appeal review and considers its case during the process. This appeal is fairly unique and different in that since the submission of the appeal the LPA has withdrawn 70% of its reasons of refusal as is set out in paragraph 8. The planning balance, even on the LPA’s case has materially changed leaving only the 3

reasons of refusal remaining. Those grounds which no longer are objected to do not disappear as a matter of principle, but they switch to being reasons that justify permission.

9. The Appellant cannot see any evidence that Mr Mead or anyone else from the LPA has materially re-evaluated their evidence and more importantly the planning balance in the light of 70% of their reasons for objecting no longer being deployed to justify a refusal. Mr Mead has undertaken a planning balance in his evidence but there is no material attempt to grapple with the fundamental change in the balance that has obviously occurred in the light of the change in the LPA's position. Consequently, the LPA have acted unreasonably by not considering whether the position of opposition to the grant of consent by the LPA was justified now.
10. The LPA's objections to the grant of planning permission and continued defence of this appeal were and are manifestly unreasonable. The planning evidence called by Mr Mead is the most substantive and compelling statement of planning benefits. Such behaviour is the clearest example of unreasonable behaviour in delaying a development which patently should have come forward and should have been granted planning permission. It is completely within the examples of where the LPA have acted unreasonably due to their substantive case, and a quintessential example of an LPA failing to properly exercise its development management responsibilities. It absolutely justifies a costs award.
11. The LPA have prevented a fabulous development which has 9 powerful benefits, all of which demand weight in any planning balance as Mr Mead accepts, and he gives cumulatively very considerable weight to as will be confirmed in cross examination. Considering the development plan and other material considerations, on any planning judgment this was a proposal that should have been granted permission. In seeking to obstruct and delay it, the LPA have acted unreasonably, and the Appellant has incurred very significant costs by having to fight this appeal at a 4-day public inquiry. These are costs which it should not have to bear as they have been brought about by the LPA's unreasonable behaviour as shown above.
12. Applying the principles set out in the PPG (which in itself is not an exhaustive list), it is obvious from the above that the LPA has acted unreasonably in refusing to grant planning permission on the basis of both reasons for refusal originally imposed and now only the three which are now contended do not provide a reasonable or proper basis for objecting to the proposal. The Appellant therefore seeks a full substantive award of costs from the submission of the appeal in June 2025 to the formal close of this inquiry on 17 October 2025.

Final response of Churchill Living Ltd

13. The appellant chose not to make any additional points in final comments.

The response by Dudley Metropolitan Borough Council

14. The response was made in writing. The application is resisted in full and is totally without merit. This is an application for planning permission which was not subject to pre-application consultation. The Appellant neglected to undertake such an application. Pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system for both the quality of planning applications and their likelihood

- of success. Had a pre-application consultation been undertaken, some of the reasons for refusal could have been dealt with prior to submission. Dealing with those matters through the course of the application wasted Officer time. Failure to engage early in the process meant that officer time and public resources had to be dedicated to issues that could have been addressed earlier.
15. The application was then subject to detailed scrutiny by statutory consultees. A number of the statutory consultees objected, including the national governing body for sport, Sports England. This ultimately led to an Officer Report ("OR") which was 38 pages long and which discussed the planning merits of the case in great detail. The OR acknowledged that the redevelopment of this Site would be a positive step in line with national and local policy. It noted that it would comprise a redevelopment of a vacant previously developed site within the Growth Network for residential development. It noted that this would deliver retirement accommodation through the re-use of part of the site, and it would allow the provision of new dwellings to meet a small part of the borough's housing needs.
 16. This was obviously not a complete, comprehensive submission, which resolved all of the Officer's concerns. Had the RFRs not been well-founded, they would have been unlikely to have felt the need to produce so much additional information post-determination. It was necessary in order to overcome the RFRs which were reasonable. Mr Shellum agreed in XX that, in respect of each of the following issues, further information needed to be submitted, and so the RFR at the time was not unreasonable to refuse permission on that basis:
 17. By the time that the Statement of Case was submitted, the Council clearly indicated (that being the earliest opportunity) which of the RFRs it would be defending and which it would not be. Based upon the additional information submitted, this was an early communication by the Council of its position. Critically, that was on the basis of additional information which the Appellant had supplied after the determination of the application.
 18. Mr Shellum was complimentary in XX about how the Council had dealt with the application in such a cooperative manner during the course of the appeal. All other issues had been overcome and that was clearly communicated to the Appellant in advance of the Case Management Conference. Statements of Common Ground were signed in good time so that the issues between the parties could be dealt with proportionately and duly focused.
 19. Of the remaining issues, it is unsurprising that RFRs remain – in both the case of design and highways, the Appellant's proposal fundamentally fails to comply with documents which are of material importance in the determination of this appeal – it has frankly disregarded them or chosen not to apply them: this includes the Residential Design Guide and Parking Standards SPD. The Appellant's justification – in both highways and design terms – is advanced mainly on the basis that the scheme has been acceptable elsewhere and so local design and highways case.
 20. On design, is an inherently subjective exercise. There is a high degree of professional judgement involved in the exercise. Having regard to the Council's own RDG, appropriate densities have been earmarked in locations across the Borough. That document has been produced having regard to the NPPF (2023). The proposed development is wildly out of kilter with what is considered to be

- generally acceptable in terms of densities in the densest parts of the Borough. It does not provide a ceiling, but it does provide a guide.
21. The building is also taller, than those in the immediate vicinity – and the design reasons for why such height is necessary have not been articulated. The full reasons for why the Council consider the proposal to be unacceptable in design terms are set out in the Closing Submissions – those are herein adopted but are not repeated. Similar observations can be made in respect of the highways/parking RFR. Mr Hoggarth – a professional highway engineer – considered the scheme to have several shortcomings. The Proposed Development is not compliant with the SPD and deviates from it in several material ways. The Proposed Development fails to provide parking in accordance with the SPD for the development itself, but would have wide-ranging knock-on impacts in the locality, including by completely removing the recreational car parking spaces, providing spaces below the size standard, and failing to provide compliant “shared space”.
 22. Mr Hoggarth’s detailed analysis and criticisms are set out in his very detailed proof of evidence. For all of these reasons, Mr Hoggarth’s view is that the Proposed Development falls short in both NPPF and local planning policy terms. Beyond the complaints of the LPA on this issue, the statutory consultee in relation to the sporting provision – Sports England - maintains that the scheme is unacceptable. Part of that objection relates to the failure to adequately re-provide parking. Nothing the LPA has put forward adequately addresses that objection. That objection has been carried forward by Mr Hoggarth, and Mr Mead.
 23. The sports-related concern is not just about whether or not nearby streets can absorb the demand; equivalent or better provision needs to be provided. This is because inadequate provision can deter local people from using those facilities. It can hardly be said to be unreasonable to maintain the objection on that basis. Moreover, in such circumstances, the starting point is that permission should not be granted: see §104. That high hurdle has clearly not been overcome.
 24. It is trite that a planning balance is not a mathematical exercise. The Proposed Development will deliver benefits, and that is accepted. It is acknowledged that the §11 tilted balance is engaged, that redevelopment of this brownfield site is supported, and the need for older persons’ accommodation is critical. But against that is set the planning harms of the case: these are significant. The Proposed Development will remove the recreational car parking facilities available to members of the football club and to those who use the green space. On the Council’s case, the design will be excessive, and that is a concern which the Secretary of State considers to be particularly important when exercising the §11 balance.
 25. In terms of reason 1 of the application, The Council can hardly be said to have ignored those national policy considerations when it has grappled with each of the material factors at §19 in Planning proof and has attributed weight to them accordingly – in many cases, weight at the higher end of the spectrum. The allegation that these are “ignored” (See §19) is entirely false and misleading. It has grappled with each of those factors in the Proof of Evidence and in the other material before the inquiry. For the reasons set out in closing, they did not need to attract further explanation, given that many were agreed matters – as addressed in the SoCG. That is consistent with the Inspector’s CMC note to not repeat matters

- covered elsewhere. Far from ignoring national policy, this has been grappled with – and attributed weight.
26. The three proofs have been prepared by professional, experienced individuals, each with the requisite qualifications to provide a view to a public inquiry. They have done so thorough, detailed written and oral evidence. Much of the differences between the parties are attributable to differences of professional opinion – it is not unreasonable to exercise that discretion accordingly.
27. Mr Shellum was asked about each of the RFRs. Notwithstanding his personal planning opinion, in the vast majority of the policies put to him, he agreed that it would be open to the Inspector to find conflict on the vast majority of the policies, if the professional opinions of the council had been preferred. Had that not been remotely credible, it is respectfully suggested that that is not the conclusion that would have been drawn.
28. Plainly, it is open to the Inspector to agree with Mr Chan and Mr Hoggarth, given that it is a professional opinion, substantiated by evidence, and capable of resulting in policy and development plan conflict. The substance of why the reasons was credible is set out in the Closing submission – these are adopted and are not repeated. The objections are clearly justified, substantiated by sound evidence.
29. The Council has continued to keep the planning balance under review. By the time that it had undertaken its planning balance in the Proof of Evidence, several of the RFRs had fallen away. Mr Mead was of the view that those reasons that remained were still enough to amount to harms that “significantly and demonstrably” outweighed the benefits. Mr Mead has continued to do that, even up until the time that he gave evidence in chief.
30. That was a defensible position to take, not least given that several of the features to which particular regard needs to be had are set out in §11(d)(ii) NPPF, and were engaged on the facts of this case, notably the need to have particular regard to securing well-designed places. The building is overbearing; it is excessive in terms of scale, density, and design. It is not well-designed for a number of compelling reasons set out by Mr Chan. That was clearly a significant and demonstrable reason capable of overcoming the tilted balance.
31. Planning is not a mathematical exercise; there are a number of remaining harms which significantly and demonstrably outweigh the benefits. For the reasons set out above and more fully in the Council’s closing submissions (which are adopted by not herein repeated), the Council has clearly not been unreasonable. The Proposed Development remains contrary to the Council’s RDG, SPD, and Development Plan and parts of the NPPF.
32. This is a classic case of matters upon which judgment needs to be exercised; the planning arguments (as was clear during the planning EiC and XX of both witnesses) are matters upon which the respective RFRs stand or fall based upon the respective specialist experts’ judgements. There are reasonable differences between professionals, particularly on subjective matters such as design, which are far from unreasonable.

Reasons

33. Parties in planning appeals normally meet their own expenses. However, 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.
34. Dealing with the timing of the application first, all costs applications must be made formally before the Inquiry closes, and at a relevant point. Such an application was made in writing and sent to the Council in the week before the Inquiry. The Inquiry was adjourned on Thursday 16 October and resumed on Monday 24 November for 2 days. The Council were therefore afforded adequate time to respond and did so. The application was appropriately made and the appellant was given an opportunity to provide any final comments.
35. The Council had genuine concerns concerning the adequacy or lack of information submitted with the proposal. Whilst the ten reasons were eventually and effectively reduced to two and a half, seven concerned insufficient information and were only resolved to the Council's satisfaction by additional information that the appellant provided post determination and a variety of further documents were consequently submitted to the Inquiry. The Council could have sought this information in a more initiative-taking manner but the appellant, despite a clear confidence in the substance of their case, could have also sought resolution much earlier in the process by requesting pre-application advice. It is not clear to me why this was the case but what is clear is that with a more collaborative approach many of those issues could have been resolved prior to an appeal being made.
36. Paragraph 3.1.2 of the Procedural Guide: Planning Appeals – England states that *'The person making the appeal ('the appellant') should be confident at the time they make their appeal that they are able to make their full case'*. That was not the case in this appeal with regard to the reasons for refusal that subsequently fell away once the appeal had been submitted.
37. As to whether other 'positive' development plan policies were not balanced. The proposal will deliver benefits, and that is squarely accepted by the Council. It was acknowledged that the presumption in favour of sustainable development was engaged, that redevelopment of this brownfield site is supported, and the need for older persons' accommodation is critical, with weight being given to other benefits.
38. The report may well focus on the matters at issue with the application but it is perhaps unfair to criticise the Council at that stage for seeking to apply its own policies and guidance (and national policies and guidance), giving more weight to the design and other objections and to not refer to every single development plan policy for and against. Having now held the Inquiry, it is highly unlikely to my mind that having adopted the applicant's approach that a different decision would have been made.
39. In this appeal the issues in dispute involve matters of judgement concerning the design impacts of the development, highway effects and playing pitch and parking provision. In such cases an award of costs will rarely be justified provided that realistic and specific evidence is provided about the consequences of the proposed development. There are typically reasonable differences between professionals, particularly on the matters that require a degree of subjectivity such as the effects

of density, scale and appearance or highway safety. An exercise of planning judgment is required, which is reasonably capable of resulting in two contrasting and opposing views.

40. With regard to highway matters, the Council's witness had undertaken an additional visit and the evidence included this data and further dates of accidents from an online resource to seek to substantiate the highways concerns albeit there was no record of accidents relevant to those areas where parking took place on street. The evidence also included additional photographs of certain locations. The views of the relevant professionals were reasonably expressed and heard at the RTD.
41. The Council fairly continued to review their case including early indication of which reasons would be defended and keeping the planning balance under review when required. This was necessary given the significant additional information and attempt by the appellant to address reasons and was also highlighted by the need for the Inquiry to be adjourned so the positions of the parties could be further clarified.
42. It is not unreasonable that the Council still took the view that having reconsidered their position during the adjournment of the Inquiry, the harm they had identified was still a significant and demonstrable reason capable of overcoming the so-called tilted balance. It is also of note that the appellant's planning witness confirmed that it would have been open to the decision maker to find conflict on the vast majority of the policies in the associated planning appeal decision.
43. The cumulative reasons from the Council's objections are categorised by the appellant in this application as not justifying objection let alone coming close to significantly and demonstrably outweighing the 'very substantial' benefits. This is of no surprise to me as that is based on the appellant's own weightings. However, unless it is a simple mathematical exercise after all it was clearly open and reasonable for the Council to continue to maintain a position that planning permission should not be granted given their concerns and the weight given to the design, playing pitch parking and highways harm and conflicts.
44. The evidence also does not indicate to me that the Council went out of their way to seek objections to the proposal, the Council simply took a different view based on the evidence that was before them at the time concluding the harm they had identified would be such that their objections should prevail. Although I have disagreed as to the effects and impacts finding broadly with the appellant, I did not find that the views and opinions expressed by the Council's witnesses failed to stand up to scrutiny or were vague, inaccurate or generalised.
45. Whilst I appreciate that the applicant disagrees with the Council's consideration of the development, this is not a clear case of preventing development which should clearly be permitted. In allowing the associated appeal my decision is based on my own observations and the evidence as put to me solely by the parties having held a Public Inquiry. I do not agree that the Council's case was always unarguable, and permission should not have been withheld.
46. Although time may well have shown that the appellant's view that permission should be granted is one that this particular decision maker has agreed with, but in no way and having held the Inquiry, do I consider this is a proposal that should never have been the subject of an appeal. On the basis of not only the issues in

dispute, the strong and confident opinions on both sides and the behaviour of both parties during the application stage, whilst perhaps not unreasonable behaviour, nonetheless made an appeal inevitable.

47. For these reasons, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

R Aston

INSPECTOR