
Costs Decision

Inquiry held on 20 January, 26-27 January and 3 February 2026

Site visit made on 24 January 2026

by J Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08/05/2026

Costs application in relation to Appeal Ref: APP/H5960/W/25/3371729 Mount Clare Campus, Minstead Gardens, Roehampton Gate, SW15 4EE

- The award is made under the Town and Country Planning Act 1990, sections 78, 3202 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The appeal was made by AKA Capability LLP for a full/partial award of costs against the failure of the Council of the London Borough of Wandsworth to issue a notice of their decision within the prescribed period on an application for planning permission for use as hostel accommodation (*sui generis*) with associated landscaping and cycle parking.
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Decision

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

The submissions for AKA Capability LLP

2. The costs application was made orally at the Inquiry and submitted in writing. The applicant seeks a full costs award, and in the alternative a partial award, on substantive grounds relating to the complete lack of merit in relation to several of the issues raised. When these issues are viewed as a whole, the Council should never have raised this appeal and was unreasonable in doing so.

Partial award of costs Affordable Housing (AH)

3. A specific issue was whether the proposal should provide affordable housing (AH) and specifically, whether the issue turns on the meaning of the housing policies in the London Plan (LP) and the Wandsworth Local Plan (WLP) and whether they apply to temporary accommodation (TA). It should have been self-evident that none of the policies, relied upon by the Council, applied. The Council's interpretation of LP and WLP 2023 policies was wrong and misconceived.
4. LP Policy H4 and WLP Policy LP23 refer to a target of 50 percent of all new homes to be genuinely affordable. Footnote 50 of LP Policy H4 refers to all major development of 10 or more units triggering an AH requirement and a similar requirement appears in WLP Policy LP23, indicating ten or more dwellings on individual sites having to provide housing. The WLP AH policies expressly state that its strategic policy is to seek AH in accordance with LP. LP Policy's reference to units clearly refers to dwellings and consequently, the Council when adopting WLP, understood what LP Policy H4 meant.
5. Under WLP Policy LP23 (H), the reference to residential accommodation with shared facilities, clearly means housing with shared facilities as set out in WLP Policy LP29, i.e. Houses in Multiple Occupation (HMOs) and large-scale purpose built shared living accommodation (LSPBSLA) and not every type of residential

accommodation with shared facilities. This is again entirely in accordance with the LP, which sets out under paragraph 4.5.16 specific AH approaches in those types of development. LP Policy H12 (supported and specialised accommodation) is specifically excluded.

6. For WLP Policy LP31, part B4 refers to in accordance with LP Policies H4, H5 and H13 which means that it should be construed consistently with those policies. Housing for older people attracts an AH contribution under the LP but not specialist housing under WLP Policy H12. So even if WLP Policy LP31 applies (which it clearly does not – it states it covers all forms of housing for vulnerable people and older people defined in Use Class C2 and C3 which the application does not propose) then in any event it would still mean that no AH contribution is required from specialist and supported housing for vulnerable people.
7. The London Mayor's Housing and Viability Supplementary Planning Guidance (SPG) 2017 on Planning Obligations was not a reasonable basis to continue to require an AH contribution, as it plainly does not and cannot override the provisions of the LP, which in any event postdates it. If construed appropriately, the relevant part of the SPG (paragraph 2.51) is referring to new form of non self-contained housing such as LSPBSLA. The Council's witness rightly and reasonably accepted under cross examination that the proposal was not LSPBSLA and the application is plainly not a HMO use. Therefore, neither of LP Policies H4 and H5 can ever been advanced by the Council as a basis for requiring an AH contribution or reason for refusal.
8. The Council was aware that the Greater London Authority development management team did not share its interpretation of the LP policies when this evidence was submitted by the applicant. This is not determinative, but it should have made the Council take stock and reconsider its position. The Councils has unreasonably persisted in seeking an AH contribution from the scheme resulting in the applicant incurring extensive costs of agreeing a section 106 agreement, having to file evidence on this issue and wasting Inquiry time.

Full award of costs on substantive grounds

9. The Council has refused permission for a development which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations.
10. Putative reason for refusal (PRfR)1 was premised on a fundamental misinterpretation of WLP Policy RO2 which does not refer to maximising housing, it refers to residential development. It was no part of the Council's case presented at the actual Inquiry that the use proposed was not residential. No breach of WLP Policy PM7 was alleged yet this was still pursued at the Inquiry in its planning evidence as suggesting a lack of optimisation which, in any event, was wrong for the reasons explained by applicant's witness. Within this PRfR1, reference within WLP Policy LP24 was plainly flawed as it clearly could not and did not apply to this proposal.
11. Under PRfR2, limited access to public transport services. shops and leisure facilities was asserted. Even if the site was not Public Transport Accessibility Level (PTAL) Grade 4, it clearly has adequate access to public transport, compliant with the Local Government Association's own standards, good access to shops,

- services and leisure facilities. No positive evidence was presented by the Council to substantiate this PRfR except for an assertion by their planning witness that the local supermarkets were too expensive for people on low incomes for their weekly shops (based on no analysis whatsoever). The late submission of evidence regarding the GP capacity was utterly irrelevant given the GP practices are still accepting patients. All of this could and should have been checked by the Council before advancing this PRfR and continuing to pursue this at the Inquiry.
12. In PRfR3, the Council asserted a failure to provide adequate standards of accommodation which was wrong for all the reasons set out by the applicant's architect and housing witnesses in their evidence. PRfR5, AH, is a matter that should never have been raised for the reasons previously set out.
13. PRfR6, the Council had already accepted no heritage harm in relation to a temporary change of use application. The Heritage Impact Assessment demonstrated a lack of impact, yet the Council persisted in asserting heritage harm primarily based on a flawed assumption about the rebuilding of the Lodge only to concede that the heritage harm would be very, very low. The Council's heritage witness accepted there would be heritage enhancements and therefore, there was no proper basis to assert a breach of WLP Policy R02. A scheme would and could clearly be provided via a condition for the maintenance and management of the listed buildings. PRfR7 (the lack of a section 106 obligation) raised the same AH point as previously and was in any event capable of resolution.
14. In summary, the Council's position was based on a fundamental systemic misinterpretation and misapplication of policies, ultimately because at almost every turn, it failed to properly consider whether the policies are relied upon, apply to TA, namely homeless people in need of general needs accommodation as opposed to Class C3 housing/dwellings, HMOs, LSPBSLA or accommodation for vulnerable people with specific need for onsite support. The Council's plainly unreasonable reliance on housing mix WLP Policy LP24 is one egregious example, as is the late assertion that WLP Policy LP19 on play space applies requiring more play equipment. Notwithstanding that the amount of play space is determined by the landscape plan, there is ample play area within the site. The Council has also not looked at the Wandsworth Population Yield Calculator or the GLA Child Yield calculator which just refers to housing.

Partial award of costs – baseline

15. The Council's conduct has been wholly unreasonable. The Council raised this as an issue and then only at the last minute agreed that the issue was moot. It could and should have done so well before the proofs of evidence were exchanged. The applicant accepts the evidence on baseline was not tested and in the interests of proportionality, the applicant did not seek to call that evidence merely for the purposes of a cost application, and accepts that the Inspector cannot determine how substantively reasonable the Council's case was.
16. It was the Council who first queried (In Appendix C of its Statement of Case (SoC)) whether or not there was any lawful use at all of the site and yet at no point in their SoC did they set out what the planning consequences would be if that were the case. Despite the parties, in effect, agreeing at the Case Management Conference (CMC), that the issue of baseline was moot and there was no need to call witnesses to address this issue, the Council decided to reopen this issue. The

applicant has made it clear, without prejudice to its position, it was not going to introduce arguments about the lawfulness of existing uses in this appeal and the CMC note dated 11 November recorded this at paragraph 37, 'In the absence of any applicant arguments on the lawfulness of existing use...'

17. After the CMC, the Council submitted an e-mail to the Inspector, without first seeking to discuss it with the applicant, seeking to reopen this issue and asked the Inspector to actively confirm a position, that there was a nil lawful use as a baseline. This was unreasonable as the applicant had made it clear at the CMC that this was not something that it conceded, and this precipitated a flood of wholly unnecessary submissions and correspondence on how the issue should be dealt with. The applicant repeatedly asked the Council to explain what in planning terms the consequences of its case would be, even if it were correct in its position, but the Council repeatedly refused to do so. The applicant ultimately had to prepare further evidence on this issue.
18. On 27 November, the applicant wrote to the Council expressly asking whether if, contrary to what it indicated at the CMC, it considers that the question as to whether there is a lawful use at all, and if not, what the lawful use of the site is, and if this is in fact relevant to the planning merits of the appeal proposals, then please can you explain why. The point of this was to elicit once and for all, whether or not, this issue was a moot for the purposes of this appeal.
19. On 1 December at 11.26, the Council's response deliberately avoided this question. It noted that the applicant's position was not seeking to call evidence on the lawful use of the site, the planning witness's evidence was merely going to note that the precise lawful use of the site is still in dispute but that it does not affect planning merits, in accordance with discussion at the CMC. However, it stated that the Council's position on the site's lawful use is as set out in its SoC but that was silent on the relevance of the question of lawful use to planning merits. This was a deliberate attempt to avoid agreeing whether or not the issue was moot for the purposes a s78 appeal, and was a paradigm example of uncooperative behaviour.
20. On 1 December at 21:03, the applicant again asked the Council, whether or not, the lawful use of the site (whether agreed or not) including whether or not there's a lawful use does not and will not form part of the Council's case on the planning merits of the appeal proposal. In the meantime, the Inspector asked the parties that if they could not agree on the baseline position then it would be sensible for parties to comment on the opposing viewpoints and what difference, if any, it might or might have as to harmful impact in their evidence proofs of evidence. There was no answer to the applicant's request for clarity on how or in what way the Council's position impacted on planning merits. The inspector stated that in assessing the planning impacts, including heritage, that there will be a need to make a comparison to the baseline position. This was clearly an invitation to parties to consider on whether or not the planning merits would be affected. This was precisely what the applicant had been asking the Council to do and to clarify, given that its SoC was entirely silent on this issue.
21. On 5 December, the Council asserted in its submissions to the Inspector, on reflection and particularly in light of the inspectors e-mail dated 1 December 2025, and the applicant's heritage assessment, which positively relies upon a baseline use, the Council considers it will be necessary for parties to address the lawful use position as part of their evidence. This was the Council's first indication that the

- baseline use affected planning merits and specifically agreed that it was relevant to the planning merits.
22. This precipitated evidence being prepared on the baseline which had to be filed in January. The applicant had to spend time, preparing the evidence and discussing the Statement of Common Ground (SoCG) on the baseline issue. On 14 January, the Council then finally agreed that the issue was mute and withdrew parts of their heritage witness's evidence which referred to differential impact based on nil use the following day.
23. Taking a step back from the protracted correspondence, the Council failed to properly consider the relevance of baseline at the appropriate stage. On 5 December, the Council said baseline was relevant to heritage impacts, but it took well over a month and extensive unnecessary correspondence before it finally confirmed that it made no difference to heritage impacts. It should have reviewed its position far earlier in the appeal process than 14 January. From early December 2025, the applicant and the Inspector have been requiring clarification of relevance.
24. Its failure to clarify relevance, its active assertion that it was relevant on 5 December, its introduction and withdrawal of heritage evidence based on baseline use, was wholly unreasonable. This has led to significant costs being unnecessarily incurred by the applicant, in dealing with baseline use, including extensive procedural interparty correspondence, submissions to the Inspector and preparation of evidence by the applicant's witness on use.

The response by the Council of the London Borough of Wandsworth

25. The response was made orally at the Inquiry and submitted in writing. Although the rebuttal cost statement referenced a cost application against the Council, this was withdrawn as confirmed on the last day of the Inquiry.

Partial award of costs AH

26. The applicant's witness agreed in cross-examination that any relevant plan policies should be read together and to the extent necessary, may together inform the meaning of the provisions within these policies. In this context LP Policy H4, WLP Policies LP23 and LP31, and paragraph 2.51 of the SPG should be read together. The interpretation to these policies and the inescapable conclusion that AH obligation arises is set out in the evidence and remains very much intact following oral evidence at the Inquiry.
27. The AH requirement is justified as part of the proposal and to the extent (if any) that there is a legitimate argument to the contrary, it cannot properly be said that the Council's position is unreasonable. The Council's SoC clearly sets out the policy requirements in relation to AH within the development plan and the clear and overarching policy position within it requires all major residential development to provide AH. In the Planning Council evidence, it was stated that LP Policy H4 requires all major developments which trigger housing requirements to provide AH in line with the requirements of LP Policy H5. Footnote 50 says all major developments of 10 or more units triggers AH requirements.
28. The appeal scheme is a major development comprising 10 or more units. Under the National Planning Policy Framework (the Framework), major development is defined where 10 or more homes will be provided. The appeal proposal would

therefore meet the definition of major development within the Framework and LP. The WLP and LP policies would clearly be relevant to AH. Whether or not the Inspector at this appeal adopts this interpretation and application of relevant planning policy, it cannot be argued that the position being adopted by the Council is unreasonable.

29. The applicant has relied on an unreasonably technical point that TA is not directly referenced within the WLP or LP. However, a similar point was made and dismissed by Holgate J (as he then was) in *Rectory Homes Ltd v SSHCLG* [2020] EWHC 2098 (Admin) in which use classes were considered in relation to the application of AH policy. The judge held the word dwelling in the local policy CS H3 was an ordinary English word which should be given its natural meaning, it is not a technical expression or term of art in this case. Parties have agreed that the average stay of the occupants within the TA would range from three to four years and it is entirely reasonable to apply these policies to the circumstances of the case and unreasonable not to do so.
30. The excessively limited reading of “units” in LP Policy H4 to mean “homes” and “residential accommodation with shared facilities” within WLP Policy LP23 to mean “housing with shared facilities” unreasonably narrows the scope of policies clearly intended for wider application. Paragraph 4.4.5 of LP Policy H4 does not limit the policy, as the applicant attempts to do so, to housing as distinct from TA. The policy is clear, where it states that it is crucial that residential and mixed-use development contributes directly towards the provision of AH that its ambit is wider than housing (if, which is not accepted, such a distinction was of relevance for these purposes) and applies directly to the proposal.
31. Even if there is merit in the applicant’s technical and semantic argument, the Council’s planning witness addressed the points squarely within his proof at paragraphs 8.9 and 8.13. Here, it is stated but whilst the appeal scheme is not purpose built in that it is not new built development, it would otherwise meet the general description of large scale built shared living accommodation and so it would be appropriate to apply these policies to this development. It is clear to me from the above that the appeal scheme generates a requirement to make an AH contribution irrespective of whether it’s defined as being most closely aligned with LSPBSLA or specialist housing or both.
32. The applicant continuing and persistent refusal to acknowledge the applicability of WLP policy LP31 is in direct contradiction of the clear ambiguous evidence given by their planning witness and further evidence of unreasonable conduct. The applicant persists in seeking to sidestep guidance contained within the SPG, even in the face of its clear terms. These terms make clear that contributions apply to non self-contained accommodation and hostels (of which there is no counter-argument that this is an example). The SPG is an example directly applicable and plainly informs any sensible interpretation of LP and WLP policies.
33. Furthermore, in discussions in late 2025, the applicant intimated that it received a response from the GLA regarding its position on AH requirements, The Council requested this information on multiple occasions but the full response in the GLA was not provided to the Council until proofs of evidence were exchanged even though the applicant had held this response for over a month. Following the receipt of this correspondence, the Council contacted the GLA which made it clear that it did not benefit from the full context. A further point key to the consideration of the

application is that both officers from a GLA confirmed the application would not be referable and therefore this will be a matter to be determined by the Council. It is therefore misleading and unreasonable to suggest that the GLA had formed a concluded view as to the AH obligations which may attach to the proposal.

Full application for costs on substantive grounds

34. The applicant argues that the Inspector should disagree and find each PRfR unreasonable. Various terms are used 'entirely flawed', 'inherently unreasonable', 'plainly wrong' and 'wholly unreasonable'. Allegations are made that include that the Council's position was based on a fundamental and systematic misinterpretation and misapplication of policies. Most, if not all of these allegations come in the form of bare assertions without proper particularisation as to be expected given they are baseless.
35. There is an important difference between two parties differing in their positions and arguments as to the merits or otherwise of an appeal proposal, and that amounting to unreasonable conduct on part of one of those parties. In this case, the notion that Council adopted substantially unreasonable positions in relation to any one of these PRfR is so farfetched, as to be itself unreasonable, and it would not be proportionate to respond in detail beyond the arguments and positions set out clearly in the Council 's evidence.
36. Specifically in relation to play space provision, the Council documents reference to WLP Policy LP19 repeatedly and the Council had hoped (if the applicant had chosen properly to engage) to resolve by condition. The fact that this matter has not been satisfactorily resolved and now forms part of the cost application is itself illustrative of unreasonable conduct.

Partial award of costs - baseline

37. The Inspector will be familiar with the exchanges regarding baseline having been copied into the correspondence and for completeness, a chronology of the key correspondence is attached. This makes clear that the issue was one which the applicant had argued from an early stage and its position on this issue has altered frequently and unreasonably overtime. Consequently, the applicant's application for partial costs award is misconceived and unreasonable.
38. It is not correct to say that the Council raised baseline as an issue and only at last minute agreed that the issue is moot or that it could and should have done so well before the proofs of evidence were exchanged. In fact, the applicant raised baseline as an issue in its appeal form contending the lawful use of the appeal site would need to be determined. Prior to this, the Council had accepted the recent significant lawful development appeal (the CLD appeal), the Inspectors description of the uses noting that these had not been found to be lawful and merely sought to agree an accurate description of development in line with Section 55 of the Town and Country Planning Act 1990.
39. As for the allegation that the Council should have known that the issue of baseline was moot in early stage, this is wrong and one that applies to the applicant. Unlike the applicant's witnesses, the Council's witnesses, particularly heritage and planning, made it clear that it made no difference which baseline was adopted. It was only upon receipt of the e-mail from the applicant on the 12 January, that the Council could have or should have known that the issue of baselines be regarded

as moot by both parties, following which agreement between them was swiftly reached. It is the applicant who should have come to this realisation sooner and it is unreasonable for it now to rely on its false characterisation of the actual position in support of its cost application.

40. In respect of the applicant's statement that it was the Council who first queried whether or not there was any lawful use of the site (Appendix C of its SoC), this was raised because of its mention within the applicant's appeal documents. As far as the Council was concerned, the issue of baseline was both settled (as a result of the CLD appeal) and inconsequential. The applicant decided to reopen this issue despite the parties in effect agreeing at the CMC that firstly the issue of baseline is mute and there was no need to call witnesses to reopen this issue and secondly, the applicant made clear that at the CMC this was not something that was conceded. Both these statements are inaccurate as the Inspectors notes of the CMC should reveal.
41. At the CMC, the Council made clear its likely position, that lawful use need not be an issue, was predated on a "blank slate" and this was "on the basis of a nil use", based on the understanding of the applicant's position as articulated by the applicant at the CMC. The applicant raised no objections to this during the CMC.
42. The Council indicated there would need to consider this further following the CMC and the Inspector having invited requests for clarifications more generally after the publication of his CMC note. It was understood from the position adopted by the applicant at the CMC that the applicant would not be seeking to advance arguments on the lawful use, without prejudice to its case in its application for statutory review. (These proceedings subsequently ended with the High Court dismissing the application and awarding costs to the Council).
43. On 17 November, the Council sought clarification of the position on baseline. On 24 November, the Inspector sought views of the applicant as to the 'nil lawful use' and the applicant's response 25 November is detailed in the rebuttal. Within this context, a run of correspondence makes it clear that it was the applicant and not the Council that would need to determine baseline and that the applicant's position that constantly changed. Any notes of the CMC meeting will show that the applicant agreed a nil use and then subsequently went back on this. It was the applicant's proofs of evidence that continued to argue that baseline made a difference to the issues to be determined at the Inquiry. Therefore, it was the applicant rather than the Council who should have agreed at a much earlier stage that the issue of baseline was moot.

Reasons

44. 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.

Partial award of costs - AH

45. In the main decision, TA has been determined as a form of AH having regard to the definition within the glossary of the National Planning Policy Framework (the Framework) and consequently, additional AH provision would not be required. The applicant's cost application has not sought a claim on this basis but rather that the

Council has wrongly sought to demonstrate AH provision requirements on the interpretation of development plan policy on the premise that they do not apply to TA.

46. The referenced LP and WLP Policies seek AH provision on the development comprising dwellings, units and housing. Even if TA is not a form of AH, the TA units are self-contained in terms of living, sleeping, bathroom/shower/toilet and kitchen facilities, despite some communal facilities being provided. Therefore, as strongly inferred within the main decision, it is a form of housing for the purposes of policy. The TA provides a home for residents. Although policies use different wording, the words housing, dwellings and units would be interchangeable in terms of common day usage and to argue otherwise, would be overly prescriptive and sematic.
47. In terms of WLP Policy LP31, the main decision details the non-applicability of this policy because TA would not be designed for older and vulnerable people. Therefore, there is no justification for requiring AH on the basis of this policy. However, judgement was applied to assessing the applicability of this policy, partly influenced by information arising during the appeal process. Therefore, it was not unreasonable for the Council to have come to this conclusion.

Full award of costs on substantive grounds

48. In relation to the PRsfR, the appeal has been dismissed on various grounds relating to not enhancing heritage assets, failing to optimise the capacity of the site, having regard to the policy allocation, being design-led and the utilisation of heritage assets, failure to result in a mixed and balanced community. Conflict has been cited with WLP Policy RO2. The Council's evidence was of substantive nature supporting its PRsfR. The PRfR relating to climate change was overcome prior to the Inquiry and the applicant has not raised this as an issue. In respect of the RfR7, an obligation requiring a travel plan was found to be justified having regard to the statutory tests of the Community Infrastructure Regulations 2012 (as amended).
49. For the reasons already indicated, the Inspector did not agree with the Council with regard to AH but having a contrary view does not demonstrate unreasonable behaviour. The Council came to a different view based on a reasoned and evidenced approach. Similarly, although the Inspector disagreed on the merits of their approach, the Council provided evidence on public transport accessibility levels and locations of services and facilities. Even the applicant's evidence detailed PTAL of 3 which is below good. In respect of living accommodation quality, the Council provided evidence on longevity of stays and although ultimately, the Inspector agreed with the applicant given the designed purpose of the TA, it was an evidenced argument put forward by the Council.
50. Taking the above into account, the Council's case based on its PRsfR was not based on a fundamental and systemic misinterpretation and misapplication of policies. Finally, in respect of its stance on playspace provision, it was not raised within its PRsfR and the applicant made provision for it within its master plan. However, it should have been self-evident that this would require diligent consideration in the submission of the proposal given children would be present on the site. Whilst the Council's witness had not looked at population yield calculator or GLA Child Yield Calculator, the policy requires a certain amount of space per child. It is also the case that that information on the likely number of children on site

was not known and agreed with parties until the Inquiry which meant scrutiny of this issue occurred later in the appeal process.

Partial award of costs - Baseline

51. Paragraphs 5.1 and 5.3 of the Council's SoC stated that it was necessary to address the lawful use of the appeal site at the outset and that the continued assertion that the site use benefits from an unlawful hostel use is unreasonable in light of the recent Inspector's decision on this issue. The paragraph continued to state that if this issue is to be pursued at this Inquiry then it will necessarily cause the parties to call additional evidence and for additional Inquiry time to be dedicated to the issue. The Council's SoC in part responded to the applicant's SoC which indicated at paragraph 4.30, the correct baseline lawful use for a single use is as a hostel (student accommodation), not a "mixed use." The paragraph continued by stating the case that the site lawfully remains a hostel under the original permission, and that permission was never lost, extinguished, or lawfully supplanted. Therefore, both the applicant's and Council's SoC considered lawfulness should be considered as an issue
52. At the CMC on 6 November, there was a discussion of the lawfulness of the site, including in respect of the description of the application, but the Inspector noted that parties were not pursuing this. This is borne out by the clarification of witnesses, with none specifically on the lawfulness of the site, and the note at paragraph 37 of the CMC Summary Note dated 11 November. At this paragraph, the Inspector in recording the outcome of discussions, stated that in the absence of any applicant arguments on the lawfulness of the existing use, the Council has indicated no cost application would be made at this stage.
53. On 17 November, the Council, requested a ruling on lawful use as nil in relation to baseline, which it was entitled to do so given the CMC Note invited any comments. To clarify this matter, subsequent correspondence from both parties though was confusing because, when each party sought clarification on whether lawfulness mattered, parties still commented on lawfulness being put forward by the other party.
54. In this regard, on 26 November, the Council confirmed their understanding of the CMC meeting, that the appellant would not be providing evidence on the lawful use of the site and that parties agreed that it was unnecessary to run arguments on lawfulness of use because it was not an appeal where any baseline really mattered. However, it also passed comment on lawfulness on the basis of the previous certificate appeal. On 1 December, the applicant requested the Council provide confirmation as to its positive position on the lawfulness of the site and whether this mattered in respect of considering the effects of the proposal. However, similarly, the applicant in seeking clarification, also commented on lawfulness in the second paragraph of its correspondence, with reference to its SoC, including its University of Roehampton letter. Given the muddled nature of the correspondence from both parties, unreasonable behaviour by the Council has not been demonstrated at this point in the appeal process.
55. On 5 December, the Council indicated on refection and particularly in light of the Inspector's email of 1 December and Heritage Assessment, it considers that it will be necessary for parties to address the lawful use position. This email noted the need to compare effects of the proposal with regard to a baseline position. It would

be clearly beneficial for agreement on this issue and the Inspector is not encouraging differing party positions. He continued by indicating that if parties cannot agree on the baseline position, this should be made clear in the evidence, either in the proofs of evidence and/or addendum to the Statement of Common Ground (SoCG), with reasons justifying each party's position. It also concluded If this situation arises, it would be sensible for parties to comment on the opposing viewpoint and what difference, if any, it might or might have as to harmful impact in their evidence (proofs of evidence). Therefore, the Council's response of 5 December was not unreasonable in response to the Inspector's email of 1 December as well as the Heritage Assessment, which had been submitted late in the appeal process.

56. For the sake of clarity on 11 December, the Inspector issued a further response. It was reiterated that in considering planning and heritage impacts of the proposal, both parties will need to consider the baseline position for comparison. Under point 3, it was advised that parties submit and clearly set out a response on what their baseline position is, comment on the need for evidence to be heard separately (which the Inspector questioned) and preference for a topic based statement of Common Ground and for parties to comment on the differing respective baseline positions. Therefore, work on this evidence for the Inquiry by main parties was in response to the Inspector's direction.
57. The Council, on 15 January withdrew evidence on baseline from heritage evidence and there was no necessity to hear evidence from the applicant (Witness Statement on Observed Use). It would be reasonable for the Council to assess the applicant's proof of evidence after submission just before the Christmas break and given the length of break over this period, including New Year, it would have not been unreasonable to come to this decision on this date.

Conclusion

58. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs, on full or partial grounds, is not warranted.

J Parsons

INSPECTOR