Ministry of Housing, Communities & Local Government

Mr Ewan Grunwald
Quod
Quod Limited
Manor House
21 Soho Square
London W1F 0EQ

Our Ref: APP/Q1445/W/24/3353409

22 September 2025

[redacted]

Dear Mr Ewan Grunwald

LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPEAL BY ST WILLIAM HOMES LLP
AT BRIGHTON GASWORKS, LAND BOUNDED BY ROEDEAN ROAD (B2066), MARINA WAY AND BOUNDARY ROAD, BRIGHTON AND HOVE, BN2 5TG
APPLICATION REF: BH2021/04167

APPLICATION FOR AN AWARD OF COSTS

I am directed by the Secretary of State to refer to the enclosed letter notifying you of his decision on the above named appeal.

This letter deals with St William Homes LLP's application for a full award of costs against Brighton and Hove City Council. The application as submitted and the response of the Council are recorded in the Inspector's Costs Report (CR), a copy of which is enclosed.

In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.

The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR34-CR53. The Inspector recommended that a full award of costs is justified on the basis that:

Emma Hopkins, Decision Officer
Planning Casework Unit
Ministry of Housing Communities & Local Government
3rd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

Email: PCC@communities.gov.uk

- the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and all other material considerations (CR48);

- the Council failed to produce evidence to substantiate each reason for refusal on appeal, made vague, generalised or inaccurate assertions about a proposal's impact and failed to determine similar cases in a consistent manner (CR49); and

- there were substantial procedural failings on the Council's part including an obstructive and untimely approach to the Statement of Common Ground, the submission of a Statement of Case which was bereft of meaningful detail and a failure to review its case promptly following a material change in national policy (CR50).

Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions at CR51 that unreasonable behaviour resulted in unnecessary or wasted expense and that a full award of costs is justified. Accordingly, he has decided that a full award of costs, as recommended by the Inspector at paragraph CR53 is warranted on grounds of unreasonable behaviour on the part of Brighton and Hove City Council.

Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that the Council shall pay to the developer its full costs of the inquiry proceedings, such costs to be taxed in default of agreement as to the amount thereof.

You are invited to submit to the Council details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at http://tinyurl.com/ja46o7n.

Right to challenge the decision

This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.

A copy of this letter has been sent to the Council.

Yours faithfully,

Emma Hopkins

This decision was made by Minister of State for Housing and Planning, Matthew Pennycook MP on behalf of the Secretary of State and signed on his behalf.

Planning Inspectorate

Costs Report to the Secretary of State

by D M Young JP BSc (Hons) MA MRTPI MIHE

Inspector appointed by the Secretary of State

Date 11 June 2025

TOWN AND COUNTRY PLANNING ACT 1990

BRIGHTON & HOVE CITY COUNCIL

APPEAL MADE BY ST WILLIAM HOMES LLP

COSTS REPORT

(ST WILLIAM HOMES LLP AGAINST BRIGHTON & HOVE CITY COUNCIL)

Inquiry Held on 18-21, 25-26 March 2025

Brighton Gasworks

File Ref: APP/Q1445/W/24/3353409

Appeal Ref: APP/Q1445/W/24/3353409
Brighton Gasworks, land bounded by Roedean Road (B2066), Marina Way and Boundary Road, Brighton and Hove, BN2 5TG.

- 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 St William Homes LLP for a full award of costs against Brighton & Hove City Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for a comprehensive mixed-use redevelopment comprising site preparation and enabling works, demolition of existing buildings and structures; provision of new buildings comprising residential use (Use Class C3) and flexible non-residential floorspace (Use Class E), new private and communal amenity space, public realm, landscaping; car and cycle parking, highway works, access and servicing arrangements; associated plant, infrastructure and other associated works including interim works.

Summary of Recommendation: That the application for an award of costs be allowed.

Recommendation

1. It is recommended that an award of costs is allowed in the terms set out at the end of this Report.

Relevant Guidance

2. Both parties rely on guidance in the Planning Practice Guidance (PPG). To avoid repetition, I set out the relevant sections below.

Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

The aim of the costs regime is to:

- *encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case*
- *encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,*
- *discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.*[1]

Costs may be awarded where:

a) *party has behaved unreasonably; and*

b) *the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.*[2]

[1] Paragraph: 028 Reference ID: 16-028-20140306
[2] Paragraph: 030 Reference ID: 16-030-20140306

The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.[3]

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. The examples below relate mainly to planning appeals and are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.[4]

What type of behaviour may give rise to a procedural award against a local planning authority?

Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include:

- *lack of co-operation with the other party or parties*
- *delay in providing information or other failure to adhere to deadlines*
- *only supplying relevant information at appeal when it was previously requested, but not provided, at application stage*
- *not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties*
- *introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen*
- *prolonging the proceedings by introducing a new reason for refusal*
- *withdrawal of any reason for refusal or reason for issuing an enforcement notice*

[3] Paragraph: 032 Reference ID: 16-032-20140306
[4] Paragraph: 046 Reference ID: 16-046-20140306

- *failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined*
- *failing to attend or to be represented at a site visit, hearing or inquiry without good reason*
- *withdrawing an enforcement notice without good reason*
- *providing information that is shown to be manifestly inaccurate or untrue*
- *deliberately concealing relevant evidence at planning application stage or at subsequent appeal*
- *failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.*[5]

What type of behaviour may give rise to a substantive award against a local planning authority?

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this 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.*
- *failure to produce evidence to substantiate each reason for refusal on appeal*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*
- *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*
- *Acting contrary to, or not following, well-established case law*
- *persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*
- *not determining similar cases in a consistent manner*
- *failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances*
- *refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage*
- *imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all*

[5] Paragraph: 047 Reference ID: 16-047-20140306

other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations

- *requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations*
- *refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal*
- *not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.*
- *if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn.*[6]

The submissions for St William Homes LLP [7]

3. The costs application was submitted in writing. The Appellant's application seeks an award of full costs against the Council. In the alternative a partial award of costs is sought. The Appellant relies on the above sections of the PPG in support of its application.

4. One example of unreasonable behaviour by an appellant is "*prolonging the proceedings by introducing a new … issue*". This would, of course, equally justify an award of costs against a local planning authority. This goes to what the Appellant has referred to as 'Case Creep' on the Council's part. Related to this point, Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that when a local planning authority gives notice of a decision to refuse, it must "*state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*."

5. There have been a number of clear and admitted breaches of this legislative provision in this case. A failure to comply with legislative requirements imposed on a local planning authority must be unreasonable. The PPG explains that *'unreasonable'* is to be used in its ordinary meaning.[8] As the Appellant pointed out in its Opening Statement "*this is the type of case the costs jurisdiction was made for*".[9] In other words, this is a textbook example of where there needs to be an award of full costs in accordance with the three aims of the costs regime set out above.

6. It is especially important that costs are awarded given the thrust of this Government's planning agenda which seeks to build 1.5 million houses in 5 years

[6] Paragraph: 049 Reference ID: 16-049-20140306X
[7] Taken from ID.21
[8] Paragraph: 031 Reference ID: 16-031-20140306
[9] ID.01

and to make as much use as possible of brownfield land. As the Prime Minister has said, "*Britain is in the grip of the worst housing crisis in living memory. For too long, the country has been held to ransom by the blockers and bureaucrats who have stopped the country building, choked off growth and driven prices through the roof. They're suffocating the aspirations of working families and obscuring the future of our country. Those days are over …*".[10] An award of costs in this case would send a clear message to other recalcitrant planning authorities that these days really are over.

7. As the Appellant noted in opening, the Planning and Infrastructure Bill published recently is looking to limit the ability of a planning committee to overturn officer recommendations especially on allocated sites. The Government has raised concern about cases where "*the development proposal was on an allocated site and in line with policy expectations, but the committee refused the application against officer advice… creating delays for all*."[11] That is exactly what has happened in this case. Against that background it is not surprising that this appeal was recovered by the Secretary of State (SoS) because it significantly impacts on the Government's objective to secure a better balance between housing demand and supply. The costs regime provides an existing tool to achieve the Government's aims. If this Government wants to achieve its laudable ambition of building 1.5 million new homes then it must sanction this Council.

8. This case concerns development on an allocated, brownfield site. The Council's professional officers recommended the grant of planning permission, but Members of the Planning Committee overturned this. Why? The Council's Opening Statement[12] provides the answer:

   "*39. The Appellant has in its evidence sought to emphasise not only the fact that the Council's case officer supported the grant of permission for the Appeal scheme but that of the 17 departments within the Council and over 20 statutory consultees only 1 (UK Health Security Agency) formally objected to the scheme including the County Landscape Architect.*[13] *They have been less keen to draw attention to the fact that some 1,700 representations were received by the Council from the public together with views from interested non statutory bodies …*"

9. The above indicates that Members acted as they did because they were influenced by the number of local objections. It is quite wrong to suggest that the number of such objections is in any way relevant. Planning decisions are not referendums. If they were, absolutely nothing would get built anywhere. What matters in planning decision-making is the underlying merits – or lack thereof – of the objections raised. It is the disappointing reality that all too often there is little or no incentive for the Members of a Planning Committee to pay any regard to the planning merits of an application that is before them. The unwillingness of elected Members to be held accountable for their decisions is reflected in the fact that not a single Member who opposed the proposals attended the inquiry to orate their objection.

10. There are often more votes to be won by local politicians in giving in to the loud objections of people (some of whom live locally, some of whom do not) than in

[10] CDE.15
[11] https://www.gov.uk/government/publications/planning-reform-working-paper-planning-committees/planning-reform-working-paper-planning-committees
[12] ID.02
[13] Reference to an objection from the County Landscape Architect is incorrect. The County Landscape Architect supports the Appeal Scheme [CDB.01].

doing the right thing and granting permission for a scheme, the planning merits of which are clear. Of course, planning has its own dynamic in that regard, especially on housing schemes. There is a demographic trend in those who have the time and resources to attend inquiries and oppose development - often over 65, often homeowners. The young, those who work, and those in most need are rarely seen in the planning process. Unless this Government can change the culture of planning and influence Member behaviour it is unlikely to deliver its ambitious planning agenda. An award of costs in this case, and cases like it, can be an important stepping stone on the path to securing this change in culture.

11. The Appellant contends that, in summary, the following matters justify a full award of costs in this case:

    a) The Council "*having regard to its accordance with the development plan, national policy and any other material considerations*" should not have refused planning permission. In doing so, it has delayed development which should clearly have been permitted. The entire costs of the appeal have thus been unnecessarily incurred.

    b) Closely related to this, and because the refusal was itself clearly unjustified, the Council have failed to produce substantive evidence to justify the reasons for refusal (RfR). For the reasons set out below, nothing the inquiry heard from the Council's sole witness came close to justifying the refusal. In addition, the Council's case has been characterised by generalised and inaccurate assertions as to the scheme's impact which have not been supported in the evidence, and in some cases withdrawn late into the process.

    c) The Council has greatly added to the costs of the appeal by its constant Case Creep.

    d) The Council has been guilty of a number of other instances of procedural unreasonableness. These have further added to the costs of the appeal.

12. The following specific matters support a full award of costs:

    a) The planning merits of the scheme are overwhelming: it being an allocated brownfield site on which officers recommended the grant of planning permission;

    b) The refusal followed very significant engagement between the Appellant and the Council going back five years, resulting in changes to the scheme[14];

    c) Seventeen internal Council departments considered and did not object to the scheme. This included the County landscape officer, the urban design officer and the Council's Heritage Team. Far from being a mark against the proposals, as presented in the Council's opening, the record of responses from the officers with competency to address the issues stands in favour of the grant of consent, or should have;

    d) Further, and as set out in the Appellant's Opening, of the 20 external and statutory consulates, only one objected;

    e) The Council's professional planning officers recommended approval, in a thorough and detailed 121-page report. The recommendation from Officers could

[14] SoCG CDI.16 paras 4.20-4.25

not have been stronger: "*the public benefits of the scheme overall, which includes the provision of a significant amount of housing are such that they clearly outweigh the heritage harm identified, any limited impacts on landscape or townscape and the harm to neighbouring amenity*."[15]

f) Regarding the decision of Members to refuse, the Appellant notes:

   i. The Minutes of the 22 May 2024 committee meeting were issued late on 4 September 2024. The Minutes are not what could be described as fulsome in the detail of the Council's concerns. During this 3 month plus period, the Council had ample time to ensure that the Minutes reflected the debate at committee, indeed it was their duty to do so. The Council heard the scheme again, 3 months later, at a 4 December 2024 committee. There were no amendments to the Minutes. Despite this, the Council sought to argue that the Minutes were not reflective of the debate at committee. In any event, the Minutes do not provide reasonable and substantive justification for the RfRs, or indeed any specificity on (for example) the heritage assets Councillors thought were in issue;

   ii. The evidence of the Appellant's landscape witness has also shown the inconsistency in decision-making by this Council in relation to the determination of this case and other similar cases.

g) The Council then failed to revisit the case. The flaws here are twofold:

   i. There was an additional meeting on 4 December 2024 in which there was a discussion which led to the abandonment of RfR2 and "seascape" and "material palette" from RfR1. Two points arise:

      1) The fact that RfR2 and seascape were dropped is an indication of how spurious the refusal was.

      2) Clarity could have been sought on areas of ambiguity inherent in the Council's decision-making so far, such as what heritage assets were in play, or which specific units were said to suffer unacceptable amenity impacts.

      3) At the time of this meeting, there was a draft revised NPPF and a large number of government statements on which the Appellant relies. The agenda had changed. There is no indication that Members even considered revisiting their overturn, which had by this point become even less tenable.

   ii. The day after the meeting, the Prime Minister delivered his article in the Times.[16] The NPPF (2024) came out a week later. Despite this, the Council failed to then go back to Members to ask them to reconsider whether to defend the appeal. Instead, the Council doubled down on its approach and (remarkably) sought to argue that there had been no change in Government policy.

h) Turning to the Council' Statement of Case, this added additional points and complaints; and led to the Council being directed to submit a supplementary

[15] CDD.01
[16] CDE.15

Statement of Case because its first was so devoid of salient information. It then produced an Errata sheet which made no mention of impacts to conservation areas and registered park and gardens, on which its evidence later relied. Even in opening, the Council's statement includes errors and Case Creep. This resulted in a case which is ill-thought out and confused.

i) The Council's evidence to the inquiry, did not get anywhere close to actually justifying the stance taken by Members. The Appellant set out eight key shortcomings below, which show the approach taken by the Council was objectively unreasonable:

i. First, as the Council's witness accepted in cross examination, there was a failure to mention let alone grapple with a very large number of Government statements emphasising the increased importance of housing delivery and the use of brownfield land. The suggestion that she had an "*implied general awareness*" when pressed on cross examination was unconvincing. A similar level of awareness was applied to the Appellant's Tall Building Study. This was not mentioned in the Council's written evidence and the witness seemed unsure about its existence following a series of questions from its own counsel.

ii. Second, the Council's position on a number of key planning policy matters lacked any credibility. To take three examples:

1. It was argued that NPPF paragraph 125(c) and the many Government statements since July 2024 were no different to the position previously. The suggestion that the present Government's position on housing delivery is "*business as usual*" and not a fundamental shift from the previous Government shows a complete lack of understanding of where matters now sit in national planning policy;

2. Evidence on the application of the presumption/tilted balance lacked any coherence or analytical rigour;

3. The Council's evidence failed to consider the development plan as a whole. Only policies alleged to be breached were considered while the many policies that were agreed to be complied with were ignored. This is a startling and unacceptable omission given the statutory test under section 38(6) of the 2004 Planning and Compulsory Purchase Act that all planners have to apply.

iii. Third, the Council's evidence was confused and laden with errors. For example, their Proof of Evidence alleged that Policy SA5 was breached in relation to the duties pertaining to National Parks, only to withdraw all evidence on impacts on the National Parks at the inquiry. Under "Planning Balance Conclusion" the Council failed to make any mention of the matters the subject of RfR3 justifying refusal having regard to the benefits of the scheme. Finally, it was argued that reference to non-RfR policies in the Statement of Common Ground (SoGC) were justified in opposing the appeal scheme.

iv. Fourth, in relation to the heritage aspects of RfR1:

1. The Council sought to contend for a form of experiential harm – derived from memory – but under cross examination accepted: (i) no appeal decisions supported this; (ii) nor did the HE guidance; and (iii) nor was such a subjective concept capable of being tested objectively.

2. Moreover, in answer to the Inspector's questions, it was accepted that for the vast majority of people, the heritage significance was contained in what they could see of the assets, rather than their setting. This makes the Council's assertions of less than substantial harm at the higher end of the scale impossible to justify for the reasons set out by the Inspector in the Edith Summerskill House decision[17].

3. Heritage was a particularly striking example of Case Creep. The Officers Report considered 17 designated and 2 non-designated heritage assets finding harm to the Grade II French Convalescent Home, Marine Gate and the flint wall (both non-designated heritage assets). In its Proof of Evidence the Council alleged harm to 53 designated heritage assets (comprising in total 217 listed properties, the two conservation areas and the RPG) and 1 non-designated heritage asset.

v. Fifth, in relation to the design aspects of RfR the Council's evidence failed to consider the architectural and design merits of the scheme, to which the Council did not object, and was thus only half an assessment.

vi. Sixth, a fundamental plank of the Council's case on RfR1 was that the appeal site was a positive gap site e.g. there was an absence of built development on it. Yet she accepted in cross examination that this was a "bizarre" argument given that the site is allocated.

vii. Seventh, on RfR3:

1. It was accepted by the Council in oral evidence on RfR3 that the daylight, sunlight and overshadowing impacts were not in fact unacceptable but rather only sub-optimal and so not in breach of Policy DM20 (and, therefore, NPPF paragraph 130(c)).

2. The claim that RfR3 alone could possibly have justified refusal lacked any credibility.

3. The Council accepted it had undertaken no stage two assessment of sunlight and daylight issues despite this being clearly required by case-law.

4. There were a number of matters on privacy which clearly can be dealt with by condition (e.g. oriel windows, planting between private and community open space) and despite agreeing these conditions the Council continued to pursue its objections.

5. The Council relied upon Policies DM1, DM18 and CP14 in evidence for RfR3, which were not policies used in the RfR.

viii. Eighth, Case Creep. The Council accepted its case went far and wide beyond the RfRs and the concerns expressed by Members in a number of

[17] CDG.02

respects. The Case Creep has included the extensive number of heritage assets alleged to be harmed, the number of proposed homes that would experience unacceptable amenity effects and the policies alleged to be breached.

ix. Ninth, The Council argued for a site capacity / density of anywhere between 75 and 293 homes, contrary to the long standing and recently endorsed published position of the Council that the site is suitable for 340 homes. In cross examination it was accepted that the difference between the Appellant and Council is only 155 homes.

13. Procedurally, the Council obstructed the timely preparation of SoCGs – first through obstructing the overarching SoCG (from which Heritage had to be all but removed), and then the Heritage SoCG itself. It is submitted that these matters clearly justify the award of full costs. In the alternative a number of the above matters would justify a partial award of costs. For example, in relation to the SoCG process, the SoC issues and withdrawal of RfR2 and parts of RfR1 post-appeal, and the expansion of RfR3.

Conclusions

14. Paragraph 52 of the Council's Opening stated "*[i]t is of particular note that the Appellant has at points chosen to take an unfortunately aggressive approach to the appeal in a number of its communications with PINs and with the Council. It has already determined to apply for costs as we understand it*." This unreasonable allegation of an aggressive approach, made without any sort of evidential basis, is strongly refuted.

15. The fact is that the Appellant worked tirelessly for over 5 years to seek to achieve a consent for what is an allocated site. It won the support of officers through this lengthy and co-operative process which resulted in many, many changes to the scheme. The overturning of the clear views of professional officers by Members was unreasonable for all the above reasons. The Appellant has thus been put to the considerable expense and delay of this appeal.

16. On appeal the Council has failed to substantiate its case for refusal. Moreover, the Council's case has been characterised by Case Creep. The Appellant was entitled to, and has made clear throughout its intention to, seek costs if forced to pursue this appeal. There is nothing aggressive or untoward about that. The case for costs on this appeal is truly overwhelming. The Appellant in stating early it would seek costs allowed the Council the chance to reconsider whether it really wanted to carry on defending this appeal given the extreme weakness of its case. The Council determined to fight on. The award of full costs is thus clearly justified.

The response by Brighton & Hove City Council[18]

17. The response was made in writing. The behaviour the Appellant complains of is that the Council refused the application. This is of course does not amount to unreasonable behaviour even if it is counter to officer recommendations. In response to the Appellant's submissions about the Council's Opening, the relevant passages at paragraphs 52 to 57 need to be read in full. As is clear from those passages, attention had been drawn by the Appellant in particular to those statutory

[18] Taken from ID.22

representations where no formal objection was raised – including that of Historic England which of course did raise concerns and to which it is a matter of agreement should be given considerable weight.

18. The Appellant did not however draw attention to the fact that there were a considerable number of other parties, even if they are not statutory consultees, who raised perfectly valid objections to the scheme. Those objections were before the Council and the tenor of those objections were set out in the OR. They included bodies such as the Georgian Society and SAVE England. They also included 1,700 objections from residents and local bodies raising matters about design and overdevelopment, heritage as well as many other valid issues. The Planning Committee were obliged to have due regard to these objections

19. The Appellant asserts by having regard to these representations the Council was "*influenced by the number of local objections*" and that in referring to these objections did so solely because of "*the number of such objections*". The passages in the Council's opening should be read in full.

20. To be clear however, the Council does not suggest it was influenced by or refused this application because of the number of people who raised objections but because of the issues raised by those objections and because of the evidence before it. It never has suggested anything else, and the Appellant has misrepresented the position.

21. The Appellant lists a series of complaints in paragraphs 11 and 12 above which it seems to be suggesting give rise to substantive unreasonable behaviour. These essentially are a 'merits based' argument i.e. that they consider that the Council should not have refused its application (in particular because its officer recommended in favour) and thereafter assert that the reasons for refusal are not justified. It is important to remember that the usual position is that parties bear their own costs on appeal.

22. There was of course nothing unreasonable about concluding that the scheme was not acceptable in planning terms for all the reasons set out in the Council's evidence including with respect to matters of heritage. It is significant that a number of the assessments before the Planning Committee at the decision stage were subsequently criticised and rejected by the Appellant's own witnesses.

23. The Appellant then complains that the Council failed to review its reasons but omits any recognition that it did that very thing and withdrew one reasons as well as amending another. None of this amounts to unreasonable behaviour. Thereafter the Appellant complains about the Council's evidence picking up on certain errors. There is no evidence from any of this critique that the Appellant had been placed at any disadvantage or has not been able to respond to the Council's case.

24. The suggestion that there has been Case Creep, and that the Council has doubled down on its objections is not reasonable. This is nothing more than an attempt to tarnish the Council's evidence to the inquiry.

25. The Appellant has pointed to nothing that demonstrates it has incurred any wasted expense. The reasons for refusal stood up to scrutiny and to the extent that the Inspector and/or the SoS rejects any of the matters raised does not in itself give rise to proof of unreasonable behaviour and wasted costs.

26. This Costs application is a thinly disguised merits-based application. What is more the Appellant fails to recognise its own behaviour which the Council drew the Inspector's attention to prior to the inquiry. The Council would refer in particular to the letter sent to PINs dated 13 December 2024.[19] It is clearly also a fact that there has been no procedural delay in pursuing this appeal.

Conclusion

27. In light of the above, the Inspector is duly asked to reject this application for costs. It is unsubstantiated and does not meet the relevant tests set out in the guidance.

Final response by St William Homes LLP[20]

28. The Council alleges that refusing to grant planning permission is not unreasonable behaviour. In the circumstances of this case, where the merits of the scheme are overwhelming, the PPG makes clear that "*preventing or delaying development which should clearly be permitted*" is unreasonable behaviour. The suggestion that the RfRs "*stood up to scrutiny*" bears no relation to the evidence heard at the inquiry.

29. In that connection, the Council seeks to suggest that "that a number of the application assessments before the committee at decision stage (some of which found benefits were there were none) were subsequently criticised and rejected by the Appellant's own witnesses". It is not entirely clear if the Council's counsel was listening to the answers given by Mr Pullan and Smith and Dr Miele when questioned on these points. They made very minor comments and suggestions for improvement to the previous assessments submitted on behalf of the Appellant on a very small number of issues. It is inaccurate to say these assessments were "rejected", these minor disagreements were in line with the Council's own officers' views. The suggestion that this is cover for the Council's unreasonable conduct is manifestly a bad one.

30. The Council seeks to rely on the "*valid issues*" raised by the 1,700 objections, the Georgian Group, and SAVE Britain's Heritage, dismissing the Appellant's application as "*arrogance*". However:

    a) As the substantive evidence in this case has borne out, there really is no merit in any of the objections put forward by the Council, and certainly not enough to have refused permission. This is not "arrogance" but reflects the considered views of the Appellant's experienced professional team. It is worth noting that even at appeal stage, the Council's own witness failed to undertake the section 38(6) exercise.

    b) The objections by SAVE and the Georgian Group do not reflect the case put by the Council at the inquiry. For example, SAVE alleged substantial harm in NPPF terms whereas the Georgian Group alleged harm to the registered park and gardens. If those were the basis for the Council's decision, it does not explain why (a) it took so long for the Council to particularise the assets alleged to be harmed and (b) why the Council went so far beyond either objection in the scope of its assessment. Neither, therefore, provide the cover the Council seeks for the expansion of its heritage case. Moreover, neither SAVE nor the Georgian Group, undertook the full planning balance exercise (only the Officer's Report

[19] CDI.13
[20] Taken from ID.23

did that for Members) and so neither provide cover for the Council's substantive decision to refuse.

c) While the Council argues it did not pay attention to the number of objections, it is notable that the Coalition considers the numbers were one of their motivating factors: see the Coalition's closing arguments.[21]

31. In relation to the Council's revisiting of its reasons, the Council's cost response alleges that the Appellant "*omits any recognition that it did that very thing*". However, even a quick skim of the Appellant's application (see paragraph 12g-f above) demonstrates that is not true, and that the Council has failed to engage with the substance of the criticism made.

32. In relation to the Council's response to the criticisms of the Council witness' evidence:

a) The Appellant picked up on errors in the evidence because it was forced to incur time and expense responding to points that were abandoned at the inquiry (e.g. on Policy SA5). The Council's attempt to suggest this is solely about procedural disadvantage (paragraph 23 above) is misplaced and again fails to meet the point the Appellant is actually making regarding increased cost and unreasonable conduct.

b) The Appellant has highlighted the Case Creep because it has had to incur additional cost, time and expense responding to an ever-expanding case put on behalf of the Council. Moreover, it shows the basis on which Members refused was entirely untenable, as the Council had to expand its case. The Appellant is not "*seeking to provoke*" or being "*aggressive*" but is making clear that the way the Council has conducted itself and its appeal is unreasonable. Local authorities with Members who fail to discharge their duties responsibly cannot be surprised when they are then not afforded leeway to try and retroactively bolster an already weak case. This is not being "aggressive" but making clear to Members that unreasonable actions have consequences. It must be borne in mind that after that letter the Council was directed to provide its Supplementary Statement of Case because it had failed to provide the required information in its Statement of Case or thereafter. To the extent that letter shows anything, it is a continuing refusal by the Council to engage with its obligations.

33. The Council's costs response is a weak defence which only serves to highlight its own unreasonable conduct. Its suggestion that the Appellant has not had to incur wasted expense is plainly wrong, in light of the foregoing and the Appellant's costs application.

Reasons

34. 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. The Appellant argues that the Council behaved unreasonably on both substantive and procedural grounds.

35. Dealing with the latter first, I have reservations about the Council's failure to take the matter back to the Planning Committee following the publication of the new

[21] ID.19

NPPF in December 2024. The changes therein, particularly those to paragraph 125c), were clearly material to the Council's case and it would have been helpful if clear guidance from elected Members on this change had been sought. The changes to the NPPF as well as Ministerial statements made around the same time were also material. Accordingly, I consider the Council's failure to review its case in light of the revised NPPF to be unreasonable.

36. There were also issues with the Council's SoC and the SoCG. The scant nature of the former necessitated a direct intervention from the Inspectorate. Letters between the Appellant and Council dated 16 August and 13 December 2024 demonstrate that the Council failed to engage in a timely and proactive manner on the production of the SoCG, contrary to the Procedural Guide: planning appeals – England (2024).

37. It took the Council over 10 weeks to respond to the draft SoCG which was three days before the original deadline thereby necessitating an extension of time to be granted by the Inspectorate. At that stage the Council had still not provided the clarity sought by the Appellant regarding the scope of the RfRs (these details were first requested in August 2024). The draft SoCG returned by the Council on 6 December contained a significant number of deletions. I do not intend to provide a running commentary on each of these, but it is fair to note that many of the deletions related to matters that were not controversial and were later reinstated and/or conceded by the Council at the inquiry. I thus consider the Council's approach to the SoCG was unreasonable.

38. Turning to the substantive grounds, it is a fundamental principle of local decision-making that a planning committee is not bound to follow the advice of its officers. Nonetheless, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. Similarly, whilst the views of local residents and local organisations must be taken into account, the extent of local opposition is not in itself a reasonable ground for resisting development. To carry weight, opposition should be founded on valid planning reasons and supported by substantial evidence.

39. RfR1 is primarily concerned with effect of the development upon the character and appearance of the area including heritage assets. This inevitably involves matters of judgement concerning the landscape and visual effects of the development. 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.

40. However, the Council's objections failed to stand up to scrutiny at the inquiry for the reasons outlined in the Appeal Report. Principal among those reasons was the Council's failure to meaningfully engage with the fact that this is an allocated site and as such there are a range of landscape, visual and heritage impacts that flow from this.

41. RfR3 also failed to stand up to scrutiny at the appeal given the Council accepted that living conditions for future occupiers would be 'sub-optimal' rather than 'unacceptable'. It was further accepted that the Council had not adopted the two-stage approach under the BRE guidance as is established practice in daylight/sunlight assessments. The Council's approach was thus flawed and failed

to display any degree of flexibility as required by NPPF paragraph 130c). Issues relating to privacy were capable of being addressed by planning condition. I therefore conclude that the Council failed to produce substantive evidence to justify RfR3 and this amounted to unreasonable behaviour.

42. At the inquiry, the Council argued that the heritage harm provided a 'strong reason' for refusing the development. However, based on the published Minutes[22], that does not appear to be what Members had in mind. The Minutes which were approved several months after the meeting, only contain two references to heritage (only one of these was during the debate). The first was a comment from Cllr Allen who stated there would be '*limited harm from Sussex Square*' and the second from Cllr Davies, who was recorded as expressing concern regarding the '*effect on the Kemp Town estate*'.

43. With regard to Cllr Allen's comments[23], the Minutes show that despite his concerns about the view from Sussex Square, he was '*leaning in favour of the application*'. That strongly suggests that he did not feel the heritage harm was 'substantial' in the words of paragraph 125c) nor represented a 'strong reason' to refuse planning permission or indeed outweighed the public benefits of the scheme. Cllr Davies' expressed concern about the effect on the KTCA[24] and pointed out that Historic England and SAVE Britain's Heritage disagreed with the officer's assessment of no harm.

44. Accordingly, there is nothing in the Minutes of the Committee Meeting to support the stark broadening of the Council's heritage case which alleged varying degrees (and in some cases high) levels of less than substantial harm to a vast number of assets across east Brighton. There was thus a clear element of Case Creep in that regard which amounts to unreasonable behaviour. It is notable that the Council has not provided any cogent rebuttal of the Appellant's allegations in this regard.

45. The Council's assessment of harm to a number of assets was predicted at least in part on the novel concept of 'experiential' harm. This '*flew in the face*' of established Historic England guidance, recent SoS decisions and established case law which have all considered the issue of 'setting' in some detail. At times the Council's witness gave the impression that she had conflated 'harm' and 'weight' in her analysis.[25] The Council's heritage case also contrasted sharply with the approach it took in relation to the recent Brighton Marina development and the conclusions reached by the SoS. In my view, the failure to determine similar cases in as like manner and the reliance on an experiential approach both amounted to unreasonable behaviour.

46. Irrespective of the level of harm to individual heritage assets, the Planning Committee was obliged by NPPF paragraph 215 to weigh any harm they identified against the public benefits of the appeal scheme. There is no evidence that any such exercise was undertaken. Without this it is difficult to see how the heritage concerns expressed by the Committee amounted to a 'strong reason' to refuse development under NPPF paragraph 11d). The Committee should therefore have carried out the 'tilted balance' in NPPF paragraph 11d), or in the alternative, the statutory balancing act under Section 38(6) of the 2004 Planning and Compulsory

[22] CDD.06
[23] Para 119.62 of the Minutes
[24] Para 119.49 of the Minutes
[25] Para 7.216 of the Council's Proof of Evidence

Purchase Act 2004. Despite Informative 1 to the Decision Notice[26] there is no evidence that the Committee undertook any of the required balancing exercises.

47. Had it done so in an objective manner, I find it most unlikely that the application would have been refused. That is because the planning balance (the weighing of harms against benefits) is so overwhelmingly in favour of the development that to reach any other conclusion would have been unreasonable. The Council's decision to refuse permission thus reflected a fundamental breakdown in the approach to decision-making required under the 2004 Act and NPPF.

Conclusions

48. Had the Council had proper regard to its own Development Plan, the NPPF, other material considerations and carried out a proper balancing exercise, the application would most likely have been approved notwithstanding the concerns raised by Members. The Council therefore prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and all other material considerations.

49. The Council's objections did not stand up to scrutiny and therefore I find that the Council failed to produce evidence to substantiate each reason for refusal on appeal, made vague, generalised or inaccurate assertions about a proposal's impact and failed to determine similar cases in a consistent manner. It goes without saying that a decision to refuse planning permission on an allocated site against the professional advice of officers requires very careful consideration and highly robust reasoning.

50. There were also substantial procedural failings on the Council's part including an obstructive and untimely approach to the SoCG, the submission of a Statement of Case which was bereft of meaningful detail and a failure to review its case promptly following a material change in national policy.

51. The above unreasonable behaviour resulted in unnecessary or wasted expense, as described in the PPG. I therefore conclude that a full award of costs is justified.

52. While I understand that the above will come as a bitter blow to the Council, it is right that I acknowledge the important work of officers during what was a long pre-application and determination period. That work culminated in the production of a Committee Report which was of the very highest order. Officers were also beyond reproach for the way they assisted the inquiry.

Recommendation

53. It is recommended that the application for a full award of costs be allowed.

D M Young

INSPECTOR

[26] CDD.05