

IN THE MATTER OF AN APPLICATION FOR PLANNING PERMISSION

BY BURLINGTON DEVELOPMENTS LONDON LIMITED ("THE
APPLICANT") TO THREE RIVERS DISTRICT COUNCIL ("THE
COUNCIL")

CALLED IN UNDER S.77 OF THE TOWN AND COUNTRY PLANNING
ACT 1990

RE. LAND EAST OF OXHEY LANE, CARPENDERS PARK

APPLICANT'S COSTS APPLICATION¹

I. INTRODUCTION

1. In the past, call-in cases tended to concern applications in relation to which the LPA had either not yet reached a view at the time of call-in, or in relation to which the LPA was minded to grant but the Secretary of State decided that the decision should be made by him/her.
2. The present case is different. The Council's Planning Committee had, by the time of the call-in, already resolved to refuse planning permission. That was the very reason why the application was called-in (in line with recent procedural changes to facilitate the Secretary of State's ability to call in applications that the LPA proposes to refuse).
3. Accordingly, the cost of this inquiry is a direct result of the Planning Committee's resolution to refuse planning permission. Had the Secretary of State not called-in the application, then it would have been refused by the Council pursuant to the Committee's resolution, the Applicant would have appealed and the inquiry costs would still have resulted from the Planning Committee's decision.

¹ This Costs Application uses the same abbreviations as the Council's closing submissions.

4. Had the Planning Committee instead resolved to *grant* permission, in accordance with the professional advice of its professional case officer in their Officer's Report, then permission would thereafter have been granted without the need for an inquiry.
5. Therefore, the Applicant's costs have directly been caused by the Planning Committee's resolution to refuse.
6. That resolution was substantively unreasonable.
7. The following overarching points are made in favour of that general submission:
 - 1) The Officer's Report provided a comprehensively and compellingly reasoned case for the grant of planning permission.
 - 2) Members had the benefit of counsel advice from both the Applicant's K.C. and counsel instructed by the Council (Dr Alex Williams), which confirmed the legal soundness of the analysis in the Officer's Report.
 - 3) The Secretary of State's *evidence-based*² direction to include the site in the Council's Regulation 19 local plan was a further affirmation of the principle of development of the site and the sustainability of its location for development of the scale proposed.
 - 4) The resolution to refuse permission, coming a day after that direction, was a direct and unevidenced affront to the professional advice in the Officer's Report and to the Secretary of State's direction.
 - 5) See also, generally, the Applicant's Closing Submissions dated 17th July 2026. For all the reasons set out there, the Council's case was not

² See CD 4.17 and CD 4.19 and para. 51 of the Applicant's closing submissions.

just wrong, it was unreasonable.

8. Without prejudice to the generality of that general submission, the following specific points are made, each of which is sufficient in itself to justify an award of costs, but which collectively also have cumulative force.

II. GREY BELT

9. The Council's contention that the Site is not Grey Belt hinged on whether it makes a "strong" contribution to Green Belt Purpose ("GBP") (a).
10. The Council's case in this respect turned upon the following propositions:
 - a. As a matter of approach, the Site needed to be "*fully contained*" by "*features that weaken the land's contribution to GBP (a)*" in order to fall within the PPG guidance for "*moderate*" rather than "*strong*" contribution (Ms Fitzgerald having confirmed in XX that she was not advocating a departure from the PPG);
 - i. Applying that approach, as a matter of fact, the Site's southern boundary lacked a "*feature that weaken[s] the land's contribution to GBP (a)*" because the HSFSA was only a "land designation" / "planning designation".
 - b. As a matter of approach, even if the site contained sufficient "*features that weaken the land's contribution to GBP (a)*", its development would nonetheless be "*incongruous*", that would mean its contribution to GBP (a) is *strong*";
 - i. Applying that approach, as a matter of fact, the site's development would be "*incongruous*".
11. At every stage, this analysis is not just wrong but unreasonable.

Features that weaken the land's contribution to GBP (a)

12. For the reasons set out in the Applicant's closing submissions at paragraphs 32-42, it is not only obvious on any reasonable reading of the PPG, but was also accepted not just by Dr Williams's counsel advice for the Council but also by the Officer's Report and indeed by Ms Fitzgerald in XX (who accepted the principles in Dr Williams' advice), that the relevant features do not need to be on all four sides of a site. The test applied by Ms Fitzgerald and Mr Dawson of "*fully contained*" (see para. 42 of the Applicant's closing submissions) flies in the face of the PPG. As a matter of approach, it is not reasonable.
13. Further, even if this were a reasonable approach, Ms Fitzgerald's application of it on the facts to the HSFSA was unreasonable. See paragraphs 47-48 of the Applicant's closing submissions. She unreasonably did not take the trouble to contact the EA, whose operational asset the HSFSA is, and had she done so she would have discovered that the position was as set out in Mr Allin's rebuttal Appendix 2, namely that the entirety of the area within the purple hatched area shown there was "*very much part of the operational asset*". Her contention, pursued in the Council's closing submissions, that this area was purely a "*land designation*" or "*planning designation*" is wholly irreconcilable with the EA's position as the statutory undertaker responsible for the operational asset. It is the planning equivalent of Fake News.
14. Further, and in any event, there is not a grain of evidence that any of this analysis featured in Planning Committee Members' reasoning. It can thus fairly be inferred that Council's case in this respect at the inquiry was a contrived retrofit to gild a politically-influenced decision by the Committee (whose party political complexion differs from the Minister whose direction they defied a day after it was made).

15. Any one of the three submissions outlined at paragraphs 12-14 above would be sufficient on its own to justify an award of costs under this heading.

"Incongruous"

16. It was unreasonable of Ms Fitzgerald to treat this as a free-standing means by which the Site makes a "*strong*" contribution to GBP (a) applying the PPG (as she purported to do. The use of the word "also" in the relevant part of the PPG makes clear beyond sensible argument that the PPG sees this as a cumulative, rather than free-standing, feature. See paragraph 50 of the Applicant's closing submissions.
17. Further, and in any event, there was no reasonable basis for departing from the clear and justified analysis of the Officer's Report that the development would be viewed as a "continuation of Carpenders Park and is significantly contained" such that it would not be incongruous. See paragraph 51 of the Applicant's closing submissions.
18. In this respect, too, there is no indication that Ms Fitzgerald's analysis featured in Planning Committee Members' own reasoning.

The Council's unreasonable case on NPPF paragraph 155(c)

19. This case was manifestly outside the reasons for refusal. That was unreasonable. See paragraphs 54-62 of the Applicant's closing submissions, which for the sake of brevity are not repeated here but are to be treated as incorporated by reference into this costs application (to the extent necessary, Sir, please cut and paste those paragraphs into the report to the Secretary of State in relation to the costs application).
20. Ms Fitzgerald and Ms Sargent of counsel on her behalf sought to defend this retrofit on the basis that Ms Fitzgerald was entitled to offer you her professional view. That is a wholly spurious and unreasonable logic. Ms

Fitzgerald's overriding professional obligation was to you and the Secretary of State, as the tribunal to whom she was giving expert evidence. That obligation included sticking within the tramlines of the Council's decision which she was there to defend, as opposed to going off on a frolic of her own under the fig-leaf of 'personal professional judgment'. See in this respect the Costs Decision of Inspector Dominic Young at ID18, paragraph 39:

"The R6 argues that the heritage witness had a "*professional obligation*" to consider all the heritage assets she considered fit. I disagree. As with all planning inquiry witnesses, Ms Burley was first and foremost obliged to assist the inquiry which by extension means adhering to the relevant inquiry procedure rules. I do not consider professional witnesses have some kind of *carte blanche* to suddenly expand their client's case. Moreover, should they decide to do so, I am not persuaded that '*professional obligations*' can be used as a proverbial 'get out of jail card'. I therefore consider that the expansion of the R6's heritage case (sometimes referred to as 'case-creep') contrary to its SoC, email of 27 October and the CMC Summary and Directions, was unreasonable."

21. There are many respects in which this case is an opportunity for the Secretary of State to send a clear message. This is one. "*Refuse now and try to find an external expert to retrofit a justification*" is not on any view a reasonable approach for any LPA to take.
22. We invite you compellingly to endorse Inspector Young's analysis quoted above and apply it emphatically to this case.
23. Think about the message that would be sent if you let the Council off the hook for retrofitting a paragraph 155(c) case in such an egregious way.
24. Further, and in any event, the case as put was wholly untenable and thus unreasonable. Please see, in this respect, the Applicant's closing submissions paragraphs 64-76. Standing back, this is a site which the Council agrees is within walking distance of a London Overground Station and of the retail and other facilities within the centre of Carpenders Park, is within cycling distance of Watford, and is within

800m (measured from the centre of the residential area of the development) of an existing bus stop from which there are 2 services per hour in each direction to major employment and other destinations. Plus there is agreement with the Local Highway Authority over a new loop bus service. The notion that this site is not in a sustainable location is entirely unarguable.

25. In this respect too, the Council's case is (well) beyond the range of reasonable planning judgments – it is, again, the planning equivalent of Fake News. Moreover, it is wholly at odds with the Secretary of State's own *evidence-based*³ endorsement of the proposed allocation of the site.

III. THE COUNCIL'S UNREASONABLE CASE ON VSC

26. The submissions under this heading only arise if, contrary to Section II above, you consider the Council's case on Grey Belt was not unreasonable.
27. In this scenario, costs should nonetheless be granted on the basis that it was unreasonable for the Planning Committee not to accept the advice in the Officer's Report that VSC exist so as to justify the grant of permission even if the proposed development is to be treated as "*inappropriate development*" in the Green Belt (i.e. not exempt Grey Belt development).
28. The Council's case at the inquiry on this issue was threadbare. Ms Fitzgerald did not dispute the weightings of the benefits and harms as assessed in the Officer's Report, upon which the Officer's recommendation was that VSC existed. In XX she accepted that even taking her case at its highest the benefits did indeed outweigh the harms, not just quite "*clearly*" enough albeit on a "*marginal*" balance. With respect, that is pure sophistry. She was unable to point to a coherent basis for why the conclusions in the Officer's Report on VSC should not stand

³ *Supra*.

in the light of her acceptance of the Report's weightings.

29. Further, and in any event, the Sarratt VSC decision (CD 5.1) is a clear starting point, and the proposed development in this case has demonstrably *more* benefits in the context of the situation in term of 5YHLS, affordable housing, custom and self build housing and the timing of a new plan all having got *worse* since, and in the context of this scheme providing 2.5 times more housing and affordable housing than the Sarratt scheme, with only localised impacts (no-one suggested otherwise), and a wide range of other fundamental benefits including older persons and disabled persons' housing, and housing for looked after children.
30. In the context of the Sarratt decision and absent no more than localised impacts, the Council's suggestion through Ms Fitzgerald that the VSC balance is "*marginal*" is not only unconvincing (it was far from clear in XX that she herself was convinced by it); it is unreasonable.

IV. CONCLUSION

31. Had the Planning Committee (and thus the Council) acted reasonably *either* in relation to Grey Belt *or* in relation to VSC (only one would have been enough), then there would have been a resolution to grant and s.106 matters would have been the subject of negotiation thereafter. They would not have necessitated an inquiry.
32. Accordingly you and the Secretary of State only need to be satisfied that the Council acted unreasonably in relation one of these routes to permission (ie. either Grey Belt or VSC) for a full award of costs to be justified. In fact, they acted unreasonably in relation to both.
33. The Council's unreasonableness has therefore put the Applicant to unnecessary expense, for which it would be just and appropriate for the Secretary of State to require the Council to reimburse the Applicant.

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23rd July 2026