

LAND EAST OF OXHEY LANE
CARPENDERS PARK

RESPONSE ON BEHALF OF THE COUNCIL
TO THE APPLICANT'S APPLICATION FOR AN AWARD OF COSTS

References to paragraphs within the Applicant's Costs Application dated 23 July 2026 are in the format "App[paragraph number]".

Introduction

1. The Committee's resolution to refuse planning permission for the Scheme was not substantively unreasonable. As regards the "overarching" points made at App[7]:
 - 1.1. Neither the reasoning in the officer's report ("OR") nor the conclusions reached were binding on the Committee. Prior to the Application being called in by the Secretary of State, the decision-making function lay with the Committee, not with the officer. The Committee was entitled to exercise its own planning judgement and reach a different conclusion to the officer's recommendation. The Council notes that officers at Harrow Council¹ took a different view to the Council's own officer, concluding that the Site made a Strong contribution to Green Belt Purpose (a) and expressing concern as to whether the Scheme complied with Para. 155c. There is plainly scope for professional planners reasonably to reach different conclusions on these matters of planning judgement.
 - 1.2. It is not accurate to suggest that the advice of counsel instructed by the Council (Dr Alex Williams) "confirmed" the legal soundness of the analysis in the OR. The Advice from Dr Williams was provided on 20 December 2025, before the OR was produced in March 2026. In any event, it does not follow from the fact that the OR is legally sound that it was unreasonable for the Committee to reach a different conclusion to the recommendation in the OR, exercising its planning judgement (which is not a legal matter).
 - 1.3. The Applicant's costs application places too much weight on the Secretary of State's direction to include the Site in the Reg. 19 Local Plan. As Mr Allin (the Applicant's

¹ CD2.16.

planning witness) accepted, nothing is yet known of the Secretary of State's views about the Site, save that the Secretary of State wants the case for allocation to be examined². Mr Allin agreed³ that only limited weight could be given to the Secretary of State's direction.

2. Next, as regards App[14], there is "not a grain of evidence" that the Committee's resolution was a politically-influenced decision. Committee members are entitled to disagree with the planning judgements of their officers; it follows that where they do so, they are also entitled subsequently to instruct independent professional witnesses such as Ms Fitzgerald. There is nothing unreasonable about that approach.

Grey belt; and Green Belt Purpose (a)

3. The reference at App[12] to the advice given by Dr Williams is again misplaced. Dr Williams nowhere advises that "the relevant features do not need to be on all four sides of a site" – properly, he was careful to emphasise (repeatedly⁴) that the PPG "provides for guidelines not tramlines" and that the question of the strength of the Site's contribution to Green Belt Purpose (a) was a matter for the Council's planning judgement⁵. Dr Williams is of course a lawyer, not a professional planner and (as such) to the extent that he expresses a view on any question of planning judgement in his written advice, that is no indication that any different view is unreasonable.
4. As to App[13], Ms Fitzgerald's approach to the FSA was not unreasonable. To the contrary, it accorded with the PPG. As the Council noted in its closing submissions⁶, Mr Allin accepted that to conclude that the Site does not make a Strong contribution to Purpose (a) – because it does not "lack physical feature(s)⁷ in reasonable proximity, etc. – on the basis of a planning designation (such as the FSA) as opposed to an actual physical feature would be to depart from the PPG. Mr Allin also confirmed that he was not inviting the Inspector to depart from the PPG.

² See para. 9.2 of the Council's closing submissions.

³ XX2.

⁴ Paras. 12, 23, 35.

⁵ E.g. paras. 23, 35.

⁶ Para. 8.5.

⁷ Emphasis added.

5. Indeed, Ms Fitzgerald’s approach to the “physical feature(s)” aspect of the PPG was more reasonable than that of Mr Allin, who wrongly insisted that if the Inspector were to conclude that the Site did have “physical feature(s) in reasonable proximity that could restrict and contain development”, he would have to (“must”) conclude that the Site only makes a Moderate and not a Strong contribution to Purpose (a)⁸. App[12]-[13] appear to adopt Mr Allin’s stance. His position is however obviously incorrect – as Mr Allin conceded, the PPG is not worded to that effect. As Dr Williams previously advised the Council (correctly), the PPG “provides for guidelines not tramlines”. The submissions made at App[9]-[18] fail to recognise that point.
6. The Applicant’s submissions on incongruity (App[16]-[17]) are not made out. The suggestion at App[16] that it was unreasonable for Ms Fitzgerald to treat incongruity as a “free-standing” rather than “cumulative” feature is not supported by a straightforward reading of the list of illustrative features given in the PPG for a Strong contribution to Purpose (a); and again fails to recognise that the PPG does not set “tramlines”. As to App[17], the conclusion that the Scheme would be incongruous was not unreasonable. The Council relies on para. 9 of its closing submissions and reiterates (in particular) that the PPG suggests that where (as here) a site is not “partially enclosed” by existing development, the result will be an incongruous pattern of development.

Para. 155c

7. As to App[19]-[23], as part of its response to putative RfR1 the Applicant has continued to contend (following call-in) that the Scheme would not be “inappropriate” development in the Green Belt. As Mr Allin acknowledged⁹, it is not possible to reach a conclusion on whether the Scheme would be “inappropriate” Green Belt development without reaching a conclusion on Para. 155c of the NPPF.
8. Para. 155c was not, therefore, “outside the reasons for refusal”. In order to address putative RfR1 (and specifically, the question whether the Scheme would be “inappropriate” Green Belt development) in her evidence, Ms Fitzgerald was obliged to address the Scheme’s performance against Para. 155c. Had she failed to consider Para. 155c, she would not have been able to reach a proper conclusion on the question of appropriateness. The only course available to Ms Fitzgerald (in accordance with her professional obligations) was to provide

⁸ See para. 8.7 of the Council’s closing submissions.

⁹ XX2.

her true, professional opinion on Para. 155c. That is simply the factual position – it is neither “spurious” nor “unreasonable” (App[20]).

9. App[20] appears to suggest that, rather than providing her true, professional opinion on Para. 155c, Ms Fitzgerald ought to have expressed some different analysis – not reflective of her true, professional opinion – so as to “stic[k] within the tramlines” of the Committee’s decision. That suggestion is itself unreasonable. Such an approach would have left Ms Fitzgerald in breach of her professional obligations. Those obligations are not a “fig leaf”.
10. The position here is not properly comparable to the Bath Road, Corsham costs decision (ID18). In the Bath Road appeal, the R6 party’s SoC identified impacts on “the relevant designated assets” (GHH and the PCA¹⁰) as a matter for consideration. It was obviously not necessary for the R6 party’s heritage witness to “consider all the heritage assets she considered fit”¹¹ in order for the R6 party to provide evidence in support of its case as set out in its SoC. Here, in contrast, the Council’s case has consistently (since the Committee decision) been that the Scheme would be “inappropriate” Green Belt development. As explained above, in order to reach a conclusion on that point it was necessary for Ms Fitzgerald to reach a view on the Scheme’s performance against Para. 155c.
11. As to App[24]: the Council’s case on Para. 155c was not unreasonable. The Council relies upon (but does not repeat) paras. 11 to 18 of its closing submissions.

VSC

12. Contrary to what is said at App[28], the distinction for the purpose of VSC analysis between (i) a situation in which the benefits outweigh the harms but not clearly so; and (ii) a situation in which the benefits clearly outweigh the harms, is not “pure sophistry”. It is a distinction that para. 153 requires to be drawn. The policy test has deliberately been couched in terms of “clearly outweigh” rather than simply “outweigh”. The apparent invitation by the Applicant (at App[28]) to ignore the distinction undermines the robust policy protection that the NPPF continues to afford to Green Belt.

¹⁰ ID18, para. 38.

¹¹ *Ibid*, para. 39.

The mortgagee exclusion clause (“MEC”) issue

13. Finally (and without prejudice to the submissions made above) there is no justification for a full award of costs here, in any event. There is no justification for awarding the Applicant its costs in respect of the MEC issue.
14. The Council’s stance on the MEC issue is certainly not unreasonable (for the avoidance of any doubt, the Council maintains that its stance is correct). Indeed, the Applicant does not suggest that the Council’s position on the MEC issue is unreasonable. The Council notes additionally that its position was accepted (and that of the Applicant rejected) by the Secretary of State in the **Sarratt** appeal¹².
15. The Council does not agree that had the Committee taken a different view on either grey belt or VSC, “there would have been a resolution to grant and s.106 matters would have been the subject of negotiation thereafter” (App[31]). The Council would not have accepted the three-month Moratorium Period proposed by the Applicant; and there is no evidence at all to suggest that the Applicant would have conceded the MEC issue (and agreed to the five-month Moratorium Period sought by the Council) had there been a resolution to grant. The Council notes that the Applicant accepted that the MEC issue was potentially determinative of the outcome of the Application, right up until all of the evidence had been concluded¹³. Additionally, the amount of evidence that has been produced by the Applicant on the MEC point does not support the suggestion that it would have been prepared to let the point drop in a resolution to grant scenario.
16. The Applicant has failed to establish that the MEC issue would not have remained in dispute in a resolution to grant scenario, resulting in the call-in of the Application irrespective of the Committee’s position on grey belt / VSC. The Council considers that (at least) a hearing would have been necessary to ventilate the MEC issue (noting that the Applicant appears dissatisfied with the MEC issue having been dealt with via written representations, in the **Sarratt** appeal). There is no evidence to suggest that the costs of dealing with the MEC issue via a hearing would have been less than those incurred by the Applicant in dealing with the point at this inquiry.

¹² CD5.1; and see para. 56.1 of the Council’s closing submissions.

¹³ See paras. 56.2 and 56.3 of the Council’s closing submissions.

17. On the MEC point, therefore, there is no suggestion that the Council's position is unreasonable. It is not. The Applicant cannot, therefore, recover its costs in respect of the MEC issue: the PPG is clear that costs may be awarded where unreasonable behaviour directly causes another party to incur unnecessary or wasted expense in the appeal process¹⁴. Moreover, the Applicant has not shown that it has actually incurred unnecessary / wasted expense on the MEC point, in any event.

Conclusion

18. The Applicant's costs application should be refused. The Committee's resolution to refuse planning permission for the Scheme was not substantively unreasonable, for the reasons set out above in response to the points made by the Applicant. Additionally, there is no justification for a full award of costs in any event. The Applicant is not entitled to recover its costs in respect of the MEC issue.

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¹⁴ Reference ID: 16-030-20140306.