

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 REPLY

1. Most of the points made by the Council in its response to the Applicant's costs application have been foreshadowed in that application. This Reply is therefore brief. Silence on any point made by the Council does not indicate agreement, rather that the Inspector already has the competing arguments before him in order to make a recommendation on costs (and thereafter in order for the Secretary of State to make a decision).
2. Paragraph 1.1 of the Council's costs response submits that there is "*plainly scope for professional planners reasonably to reach difference conclusions*" on the issues debated at the inquiry. For the reasons already given in the costs application, the Council's stance at the inquiry was not reasonable. But in any event, and fundamentally, the premise of this submission is misplaced since the reason this case has unnecessarily ended up at inquiry was not because of the considered judgments of professional planners – the case officer recommended approval – but because of the ill-conceived decisions of political planning committee members. Contrary to paragraphs 2 and 8 of the Council's response, it was not reasonable for the Council to thereafter use an external consultant to retrofit a case that in substantial respects formed no part of Members' rationale for refusing permission.

3. On GBP(a) the Council's costs response perpetuates its untenable and unreasonable approach to the PPG – which was at the heart of its case on GBP(a).
4. Further, and in any event, there is also no answer to the point made in the costs application that, in any case, the Council unreasonably made fundamental factual errors particularly in relation to the HSFSA; had those errors not been made then *even if the Council's approach were correct* it would (had it acted reasonably) have concluded that the site is Grey Belt.
5. The Council's protestation that the paragraph 155(c) arguments advanced by Ms Fitzgerald were not outside the scope of the reasons for refusal (paragraph 8 of the Council's response) is inconsistent with Ms Fitzgerald's own concessions in cross-examination, as well as the wording of the putative reasons for refusal read in the context of Article 35(1)(b) of the DMPO and the absence of any claimed breach of the development plan policies relating to locational sustainability. Nor was it appropriate for or incumbent on Ms Fitzgerald to go on a 'solo run' taking points that were outside the scope of the reasons for refusal; the duty of the expert witness is to assist the inquiry, and that means sticking to their client's case and not expanding it (that was the essential point made by Inspector Young in the Wiltshire costs decision and therefore contrary to paragraphs 9-10 of the Council's response there is not material distinction from that decision).
6. The suggestion at paragraph 12 of the Council's case that the costs application invites you to ignore the policy test for VSC is a serious mischaracterisation. The key point is that the Council had at the time of the Committee resolution, and offered during the inquiry, no reasonable evidential basis for concluding that the test was not met.

7. As for the MEC issue, had the Committee not unreasonably resolved to refuse planning permission, this issue would not have necessitated an inquiry. There would have been a resolution to grant planning permission subject to s.106 and negotiations would then have followed in relation to the s.106. It would be wrong to speculate on whether those negotiations would have persuaded the Council (against the backdrop of a resolution to grant and support for the development) of the Merits of the Applicant's case, or whether the Applicant would pragmatically have compromised in order to get the benefit of a swift permission, or whether the point would have necessitated an appeal on this single issue (and if so whether it would have been dealt with by a hearing or written reps). In any scenario an inquiry would have been inconceivable and therefore the costs of the inquiry that happened were entirely attributable to the Committee's unreasonable resolution to refuse permission.

CHARLES BANNER K.C.

**Keating Chambers
15 Essex Street
London WC2R 3AA**

6th August 2026