COSTS: FINAL COMMENTS
ON BEHALF OF THE APPELLANT
MIDLAND PROPERTIES AND FINANCE (BIRMINGHAM) LTD

IN THE MATTER OF AN APPEAL BROUGHT PURSUANT TO SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990 ('THE 1990 ACT')

IN RESPECT OF THE REFUSAL BY BIRMINGHAM CITY COUNCIL ('THE COUNCIL') TO GRANT PLANNING PERMISSION FOR "*DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF 83 RESIDENTIAL APARTMENTS ACROSS TWO NEW DEVELOPMENT BLOCKS, CENTRAL AMENITY SPACE INCLUDING SOFT LANDSCAPING AND PLANTING, CYCLE STORAGE, BIN STORES, PLANT STORE AND ENABLING WORKS*"

AT LAND AT 334-340 HIGH STREET & 8-22 HARBORNE PARK ROAD, HARBORNE, BIRMINGHAM

PINS REF: APP/P4605/W/23/3336011
LPA REF: 2022/06737/PA

MAY 2024

INTRODUCTION

1. These are the Appellant's final comments to Birmingham City Council's ('the Council') Reply dated 17th May 2024 to our Costs Application dated 10th May 2024.

2. It is not intended to respond to every element of the Council's Reply; a lack of direct response does not mean agreement. The Appellant's costs application is already clear, and this document does not seek to repeat the submissions set out therein, which are maintained.

FURTHER COMMENTS

3. As to paragraph ¶3, the Appellant re-emphasises that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether costs should be awarded[1]. Therefore, the Appellant's submissions as to unreasonableness in respect of procedure are not restricted to whether there should be a procedural award of costs.

4. At ¶3b, the Council suggests that there is no evidence that further negotiation would have led to the approval of the application. First, the Council shut down the opportunity for discussion by unreasonably withholding information; therefore, to the extent that it is considered that it is correct that there is no evidence, that is why. Second, the Appellant's witness had to go to the extra time of dealing with the previously undisclosed comments through a separate section to his proof to cover the same. Third, had the Council disclosed such comments it is more likely than not that, through the Appellant responding at that stage, the RfR in respect of Design would have been avoided altogether. In any event, the Council's approach toward this evidence discloses a general unreasonableness which the Inspector can consider when considering whether to award costs on a substantive basis.

5. As to paragraph ¶3c, the new evidence was submitted with the proofs of evidence only due to the Council's behaviour, as explained in the Costs Application. Had the issue been raised at application stage, and advice inconsistent with the eventual RfR not been provided, it would have a) saved some of the correspondence at application stage dealing with inconsistent advice and b) save the costs of preparing a Housing Mix section to the proof of evidence which was additional to the analysis itself set out in the appendices.

6. As to paragraph ¶3e, the point was not simply put to Mr. Fulford in cross examination to make him feel uncomfortable. Rather, to make clear the unreasonableness in the Council's approach. The Appellant had to decipher what policies were relevant to each RfR and then had to second guess the

[1] Paragraph 033 Reference ID: 16-033-20140306

Council's case on each RfR. This was all at additional time and expense not only insofar as the professional witnesses to which they related but also counsel's time advising in conference.

7. The Council contends at ¶5 that it was their "*reasonable behaviour*" in keeping their case under review throughout the appeal process, working with appellants to narrow the matters of disagreement, that saved "*substantial inquiry time*"; however, for reasons already stated in the Costs Application, those RfR could've been avoided in the first place.

8. As to ¶6, it is surprising that the Council maintains that the £25,000 contribution "*would not be likely to be entirely effective*" yet maintain that it is CIL compliant. In reality, it does address concerns such that there should never have been a RfR on highways, in line with the opinion of the Highways consultee and the Birmingham Parking SPD.

9. Turning to ¶7, the Council's financial position may explain why expert evidence was not obtained but the Inspector must assess the evidence before her as it is, and not put a thumb on the scales of balance to make allowances for the financial position of either party. In any event, it does not address all that set out at ¶19 of the Appellant's Costs Application.

10. It is surprising that the Council seems to question the expertise of consultees in referring to them as "expert" in inverted commas (¶7(2)); particularly when seeming to defend its own position of advancing non-expert evidence, and when they plainly do have specific expertise in their respective fields.

11. It is wholly wrong to suggest that the Appellants continually ignored requests to substantially reduce the scheme (¶7(3)); reductions were made as explained in the evidence of Mr. Saunders. Those reductions may not have been to the extent that Mr. Fulford wished; but the Appellant has already set out why it considers the Council's position to have been unreasonable in that regard.

12. It is interesting that the Council suggests at ¶7(4) that the planning judgments reached were properly considered against the appropriate policy framework when they made references to the wrong policies in the RfR and omissions which undermines this point. Moreover, Mr. Fulford tried to argue congestion before relinquishing the point, which was not set out in the RfR.

13. In respect of both 7a(5) and 7b, whilst there may be differences in planning judgement, in this case the Appellant is clear that the Council's application of such judgement was plainly unreasonable and irrational.

23rd MAY 2024

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