

APPEAL REF: APP/P4605/W/23/3336011

Appellant: Midland Properties and Finance (Birmingham) Ltd

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.

334-340 High Street Harborne and 8-22 Harborne Park Road, Birmingham B17 9PU

REPLY TO THE APPELLANT'S COSTS APPLICATION
ON BEHALF OF THE
LOCAL PLANNING AUTHORITY

Introduction

1. On 10th May 2024 (the final day of the public inquiry) the Appellant submitted a written costs application.
2. The application is based on allegations of unreasonable behaviour by the Council of both a 'procedural' and 'substantive' nature.

Procedural

3. The Appellant relies on the following matters (italicised) to which the Council responds as follows:
 - a. *The Council refused the application without waiting for a revised viability appraisal which it knew was to be prepared (¶12). Once it was prepared and submitted, the Council withdrew the relevant RfR (¶13).*

Even on the basis of the appellant's submission the conduct of the Council has caused no additional cost to the appellant. The work to demonstrate the 'viability case' had to be done and it was done. The evidence was submitted with the appeal. The Council refused the application on 4/7/23 which was some 10 months after the application was validated (31/8/22). The Council refunded the £3,500 plus VAT the appellant had paid for the Council to instruct consultants to review viability. It cannot be said that the Council rushed with unseemly haste into a refusal decision.

4. It is interesting to note at ¶18, the Appellant avers that these procedural / process complaints " feed into" its argument of alleged substantive unreasonableness. If that is the case, then there is no application on procedural grounds at all. Either there were clear breaches of procedural expectations / rules or there were not. Further, for any such procedural breach to give rise to an award of costs, it must be clearly shown that the breach caused / gave rise to additional expense that was incurred as a result. For the reasons given above, that is simply not the case.

5. The council continued to keep their case under review throughout the appeal process, working with appellants to narrow the matters of disagreement-7(ihiin)5(c)-h8()] TETC

of benefits, even when the tilted balance is applied. This all depends on planning judgment. This has been shown through many appeal decisions, and as Mrs Buckley-Thomson identifies, it is neither a mathematical nor scientific exercise.

- (3) As the Council made clear, in the overall balance of adverse impacts and benefits nothing substantial was left out of account. The weight to these matters is always a matter for professional judgment. And in this case given that the principle of residential development was accepted as common ground, insisting on high quality design was a perfectly legitimate and reasonable planning response.

Conclusion

8. The application for costs should be refused.

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