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## Costs Decision (1)

Inquiry opened on 18 March 2025

by **Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

Decision date: 8<sup>th</sup> July 2025

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### **Costs application in relation to Appeal Ref: APP/Y0435/W/24/3350378 The Point, 602 Midsummer Boulevard, Milton Keynes MK9 3NB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by GHM (Milton Keynes) Ltd for a full or failing that a partial award of costs against Milton Keynes Council.
  - The Inquiry was in connection with an appeal against the refusal of planning permission for what was described as: the demolition of all existing vacant entertainment complex buildings and redevelopment to provide flexible Class E leisure/retail uses (upper and lower ground level), up to 487 apartments (Build to Rent, private and affordable) over the upper floors (up to 21 storeys with a floor to floor height of 3m plus a crown structure), re-cladding of the existing car park with Class E/F.2/sui generis leisure uses (bar, outdoor sports and cinema) at rooftop level, landscaped public realm, amenity space, cycle parking and associated access and servicing provision.
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### **Decision**

1. The application for a full, or failing that a partial, award of costs is refused.

### **The submissions for the appellant**

2. Submissions for the appellant were made in writing at the Inquiry. Final comments on the Council's response were received in writing after the Inquiry closed. In addition, the appellant also sought a partial award of costs for having to respond to the Council's application for costs.

### **The response by the Council**

3. The Council's responses to the appellant's applications for costs were made in writing after the Inquiry closed<sup>1</sup>.

### **Reasons**

4. The Planning Practice Guidance (PPG) tells us that parties in appeals and other planning proceedings normally meet their own expenses but where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. Such unreasonable behaviour might be procedural, relating to the appeal process, or it might be substantive, relating to the issues arising from the merits of the case presented.
5. The PPG gives examples of the type of behaviour that might give rise to a substantive award of costs against a local planning authority. These include (and the list is not exhaustive): preventing or delaying development which should clearly

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<sup>1</sup> The applications, responses and final comments are found at ID8

- be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; a failure to produce evidence to substantiate each reason for refusal on appeal; vague generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
6. The Council advanced 7 (seven) reasons for refusal of the original application. I intend to deal with each in turn. The first reason for refusal related to the provision of affordable housing, linked to questions around viability. Both sides produced viability evidence for the Inquiry but as things turned out, neither witness was called, so the evidence of both sides was left untested. That said, the appellant maintained their position that the scheme is not viable, and that did not appear to me to be questioned by the Council. The suggestion is that the Council acted unreasonably in relation to the viability question and ought to have agreed a Statement of Common Ground relating to it, thereby obviating the need for the preparation of viability evidence. However, I can understand why the Council might have been reluctant to do so in the terms advanced.
  7. First, there was the confusion caused by the reference to affordable housing in the original description of development. If the scheme was not viable at the outset, then this reference should not have been included. More importantly, despite maintaining the position that the scheme was and is unviable, the appellant at various times offered the Council a sum of £1 million as a contribution to affordable housing off-site, and the Inquiry was handed an Agreement under s.106 that included a contribution of more than £690k for the same purpose. That same Agreement did not include a 'blue pencil' clause enabling me to strike the contribution out even though it must have been obvious to both sides that on the basis of the evidence, the contribution failed to meet the tests for obligations in the Framework.
  8. In that overall context, I do not believe that the Council's apprehension about the viability position, and the ability of the scheme to deliver affordable housing, on- or off-site, was unreasonable.
  9. I accept that the Council's second and seventh reasons for refusal relating to 'infrastructure' and 'play and open space provision' could have been dealt with through a resolution to grant permission subject to an Agreement or Unilateral Undertaking under s.106 under when the Council made its decision. However, that would only have been possible if the Council was content with the scheme in all other respects. Clearly, the Council was not. On that basis, given the lack of any Agreement or Unilateral Undertaking at that stage, the reasons for refusal were not in themselves unreasonable. Reasons for refusal of this type are, in my experience, typical in this sort of situation. These matters then needed to be resolved in the appeal process and, as I have set out above, an Agreement under s.106 was entered into that dealt with them.
  10. The sixth reason for refusal relates to concerns about the height of the proposals and in particular, the detailed design of the crown structure, while the fifth relates to concerns about the height of the proposals in the context of longer-range views.

11. I appreciate that the design of the crown structure was always capable of being dealt with by condition and that visual renderings of the long-range views were provided. However, it seems to me that the Council's concerns about the height of the proposals went beyond these matters and formed a good part of the Council's concerns about the impact on the setting and thereby the significance of the Shopping Building. The potential loss of 'The Point' had a part to play in that analysis too. It seems to me that questions around the design of the crown structure, could only be resolved by condition if the Council had no issue in relation to the Shopping Building and/or 'The Point'. Similarly, the Council could only accept the impact of the proposal in long distance views if it was prepared to accept the loss of 'The Point'.
12. However, the Council maintained its position in relation to the Shopping Building and the loss of 'The Point'. In this context, I can understand why the Council was concerned about the impacts of the taller elements of the proposal rising above the Shopping Building from Silbury Boulevard, and in views out of Queens Square. They were supported to an extent by Historic England. In relation to Queens Square, I have agreed that some less than substantial harm to significance would be caused by the visual presence of the proposals, but I have found this to be outweighed by public benefits. I take a similar view in relation to the Council's approach to 'The Point' as a non-designated heritage asset. In applying the necessary balancing exercise, I have found the loss of 'The Point' to have been justified by public benefits.
13. It is suggested that in relation to the Shopping Building and 'The Point' the Council was unreasonable in not concluding similarly. However, these are matters of planning judgment and while I have not agreed with the Council's apportionment of weight, I do not consider the position they adopted to have been so lacking in merit as to be unarguable. On that basis, I do not consider that the Council's approach in relation to their third, fourth, fifth and sixth reasons for refusal to have been unreasonable.
14. Finally, I must deal with the appellant's application for a partial award of costs for responding to the Council's application for costs. I have not awarded costs in favour of the Council for the reasons set out in that separate decision. However, while the application might have been made in a retaliatory way, it was not so frivolous as to have been unreasonable. On that basis, I do not believe that the appellant has incurred unnecessary or wasted expense in responding to it.

## **Conclusion**

15. Bringing all those points together, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeals process, as described in the PPG, has not been demonstrated. As such, neither a full, nor a partial award of costs is justified.

*Paul Griffiths*  
INSPECTOR