Ministry of Housing, Communities & Local Government

8 March

Our ref: APP/P4605/W/20/3250072

Mr M Steinbrecher
Winckworth Sherwood
Minerva House
5 Montague Close
London SE1 9BB

Dear Sir,

LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 320
APPEAL BY APPEAL MADE BY EUTOPIA LAND LIMITED (C/O EUTOPIA HOMES LIMITED)
AT 193 CAMP HILL, BIRMINGHAM B12 0JJ
APPLICATION: REF 2018/09467/PA

APPLICATION FOR AN AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying his decision on the appeal as listed above.

2. This letter deals with your client's application for a full award of costs against Birmingham City Council. The application as submitted and the Council's response are recorded in the Inspector's Costs Report, a copy of which is enclosed.

3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.

Phil Barber, Decision Officer
Planning Casework Unit
Ministry of Housing, Communities & Local Government
3rd Floor, Fry Building
2 Marsham Street
London, SW1P 4DF

Tel 0303 444 2853
Email: PCC@communities.gov.uk

4. The Inspector's conclusions are stated at CR 4.1-4.9. He recommended that your client's application for a full award of costs be refused.

5. Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendation. Accordingly, he has decided that a full award of costs against the Council, on grounds of 'unreasonable behaviour', is not justified in the particular circumstances. The application is therefore refused.

6. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.

7. A copy of this letter has been sent to Birmingham City Council.

Yours faithfully

Phil Barber
Authorised by the Secretary of State to sign in that behalf

This decision was made by officials on behalf of the Secretary of State under delegated powers.

The Planning Inspectorate

Costs Report to the Secretary of State

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State

Date: 7 December 2020

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL MADE BY

EUTOPIA LAND LIMITED

AGAINST

BIRMINGHAM CITY COUNCIL

Inquiry opened on 6 October 2020

193 Camp Hill, Birmingham B12 0JJ

Appeal Ref: APP/P4605/W/20/3250072

File Ref: APP/P4605/W/20/3250072
193 Camp Hill, Birmingham B12 0JJ

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Eutopia Land Limited (c/o Eutopia Homes Limited) for a full award of costs against Birmingham City Council.
- The Inquiry was in connection with an appeal against the refusal of planning permission for redevelopment of the site to provide 480 homes, a hotel (Use Class C1), and flexible business/commercial units (Classes A1, A2, A3, B1, B2, B8 and D1), together with car parking, landscaping and associated works, including an energy centre to provide for combined heat and power and plant to serve the development.

Summary of Recommendation: That the application for an award of costs be refused.

1. The Submissions for the Appellant[1]

1.1 This is a full application for costs made in accordance with the Planning Practice Guidance (Costs) (Paragraph: 049 Reference ID: 16-049-20140306). The Guidance sets out the following:

> ***What type of behaviour may give rise to a substantive award against a local planning authority?***
>
> *Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing … or by unreasonably defending appeals. Examples of this include:*
>
> - *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
> - *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.*
>
> *…*
>
> - *not reviewing their case promptly following the lodging of an appeal against refusal of planning permission … as part of sensible on-going case management.*

1.2 The Council's behaviour has been unreasonable in the present case causing significant loss to the Appellant in having to deal with unsubstantiated objections through the Inquiry process. The criteria for a full award of costs are therefore made out in this case.

1.3 Firstly, the Council has failed to *"produce evidence to substantiate each reason for refusal".*

[1] ID12 and ID11

1.4 Mr Sweeney gave the planning evidence on behalf of the Council to the Inquiry. He expressly confirmed that, in light of the evidence before the Inquiry, his professional opinion was that planning permission should be granted. Accordingly, the Council has failed to produce any evidence whatsoever to support its case that planning permission should be refused. To the contrary, the Council's own evidence at the Inquiry was that planning permission should be granted.

1.5 Further, it is clear that the Council's case is based upon *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*, contrary to the requirements of the PPG.

1.6 The Council's reason for refusal was based on the premise that the *"proposed development may prejudice the delivery in terms of its construction of operation, the South West Camp Hill Chord".* There is no evidence before the Inquiry to substantiate that reason for refusal, and nothing beyond a *"vague, generalised"* assertion, which is not based on any objective evidence, that it *"may"* do so. In particular, it was expressly accepted by Mr White for the Council that:

i. There is no evidence before the Inquiry that indicates that if the appeal site comes forward for development, the south-west Chord might not be able to be constructed or delivered.

ii. To the contrary, the evidence indicates that it would be possible to construct an effective Chord alongside the appeal scheme.

iii. The argument that the appeal scheme might prejudice the delivery of the Chord was therefore *"speculative", "theoretical"* and there was *"no evidential basis"* to substantiate the argument that such prejudice might occur.

iv. There was no evidence, in any event, that it would be viable or feasible to deliver an alignment for the Chord across the appeal site.

1.7 Mr Sweeney also expressly confirmed that he did not have any objective evidence or analysis to substantiate an argument that there was even the potential for prejudice at the slightest end of the scale. He therefore expressly confirmed that there was nothing more than a *"vague or generalised"* concern that it might do so, contrary to the requirements of the PPG. It was on that basis that Mr Sweeney accepted that his professional opinion was in fact that planning permission should be granted.

1.8 It is therefore clear, on the basis of the Council's own evidence, that an award of costs is justified, having regard to the examples of unreasonable behaviour set out in the PPG.

1.9 Following Mr Sweeney's concession that permission should be granted, the Inquiry adjourned early, and the Council had the afternoon and evening to review its case, and could have taken the opportunity to withdraw it. The Council failed to do so, notwithstanding the fact that it no longer had a witness to support the proposition that planning permission should be refused. The failure to review its case promptly, as part of sensible ongoing case management, is a further example of unreasonable behaviour set out in the PPG.

1.10 In any case, the Council's failure to review its position is symptomatic of the unreasonable attitude that it has adopted throughout its consideration of this application. This was a case where, unusually, the professional Officer of the Council (Interim Director of Inclusive Growth of the Council) expressly advised the Members of the Planning Committee, in open session, that:

"the basis in which to refuse this application is virtually very slim"

and that to withhold consent,

"wouldn't be a reasonable position from the planning point of view".[2]

1.11 In short, this was a case where the Council's own professional Officers not only advised Members that planning permission should be granted, but also that there was no sound evidential basis to withhold planning permission, and that to do so would be not be reasonable. Members had no technical or evidential basis before them upon which it would have been reasonable for them to take a different view, there was no objection from the statutory consultee, and no evidence has been submitted through the appeal process to recover the situation. This is clearly an application which should have been permitted and the Council's behaviour is wholly unreasonable.

1.12 In conclusion, the Council's own witness accepted that the refusal of planning permission is not justified and that there is no positive, objective evidence that justifies refusal of planning permission in this case. The Council's case is wholly unsupported by evidence, is based on generalised, vague assertions as to potential impact, and it has failed to substantiate its reason for refusal or argument that planning permission should be refused. It is clear that this is a case justifying a full award of costs against the Council, in accordance with the guidance of the PPG.

2. The Response by the Council[3]

2.1 This response relies on the following paragraphs of the PPG:-

Paragraph: 028 ID:16-028 parties normally meet their own expenses

Paragraph: 030 ID:16-030 pre-requisites of a costs award

Paragraph: 031 ID:16-031 this is a substantive costs application

Paragraph: 040 ID:16-040 what is a full award of costs?

'*A full award of costs means the party's whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation. It also includes the expense of making the costs application*.'

Paragraph: 049 ID:16-049 what type of behaviour may give rise to an award against a local planning authority?

- *preventing or delaying development which should clearly be permitted,*

[2] Ms Mulliner PoE Appendix 13
[3] ID13 and ID9 as supplemented by oral submissions at the event.

having regard to its accordance with the development plan, national policy and any other material considerations

- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis*

Paragraph: 050 ID:16-050 when might an award of costs not be made against a local planning authority?

'*where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.'*

2.2 This response draws from, but does not repeat the matters set out in the Council's closing submissions, in terms of approach to the merits.

2.3 The written evidence for the Council plainly crosses the threshold to resist a costs application. The premise of the application is not accepted, with both Mr White and Mr Sweeney producing relevant written evidence to substantiate the reason for refusal at issue.

2.4 The possibility of frustrating the Chords scheme arises in the event that the processes underway reveal prejudice – given the location of the appeal site, this is a **real** possibility. What the answer in cross-examination showed, was that this prejudice is future prejudice, not currently identifiable prejudice. However, it nonetheless potentially impacts on the Chords as part of the transport network. This is reflected in the answer of Mr White in re-examination and other evidence in the case. The answer of Mr Sweeney was, based on the cross-examination, that no objective evidence of present prejudice can be shown. The Inspector's own notes will show exactly what was said. The case of the Council is that the potential for prejudice remained. Not simply because, as asserted by Ms Reid in her closings, that there remains the possibility of having both schemes alongside each other, but because an optimal scheme which could lead to conflict remains open as potential outcome. That has not been addressed in the evidence of the appellant because it simply cannot be. Given that potential prejudice, and given the responses of Network Rail, makes the position of the Council in this case a justifiable one and not a costs case. Having accepted the premise of the question, the concession was made. However, the case for the Council is that future potential prejudice suffices and in the current circumstances takes this outside of a case for a costs award.

2.5 The position of the Council was the result of position taken by Network Rail in correspondence, as has been amply explored by the Council at the Inquiry. The position left by Network Rail raised obvious and objective residual uncertainty, which did not lend itself to making clear and categoric statements. That is a response to the vague assertions point, because it is simply not possible to make definitive statements about which one cannot be definitive. However, that does not remove it, in these particular circumstances, from being evidence, because insofar as there was a residual basis for saying there was potential impact, that has been objectively explained by reference to the relevant processes in a way that has been incapable of being answered by Dr Raiss. Mr White did show, through evidence, a process that could lead to prejudice. At its highest, the case for the Appellant is that the Council was not able to

demonstrate that the prejudice would result in implications for the appeal site. In other words, that was not able to demonstrate that the potential for not being allowed alongside each other could arise. Clearly that is a potential outcome and it is not a 'case' for that reason alone.

2.6 The criticism that the evidence is speculative is unjust, as all evidence of future events speculates. The evidence presented by Mr White speculates in an informed and objective way, having regard to relevant technical guidance. In other words, it substantiates the position of the Council. It is not simply a case of Mr White bowling up to an Inquiry thinking this, but is not prepared to explain why. He said, I think this, I have explained why I think this is the position and, when asked some very carefully and well-targeted questions in cross-examination, he was unable to answer those questions. However, that does not make it a costs case, because the residual potential remains. We are in this position because of the uncertainty created by the Network Rail responses.

2.7 The evidence provided by the Appellant itself shifted during the course of the case, and was notable for Dr Raiss distancing himself from the alignment first put forward by AECOM, preferring the earlier MM2010 material – which itself was said by the author not to support the position taken by AECOM (evidence of Mr Moore called by the Rule 6 Party). This includes reliance on the MM2010 Report and designing 'on the hoof', to explain how Bordesley Station could be retained. So the evidence from the Appellant recognised a need to meet and deal with issues of substance during and throughout the Inquiry. If this was a costs case, there would not have been that requirement. The fact is, that had to be explained in terms of it being a recognised matter to be dealt with. Dr Raiss attempted to deal with it. It was elaborated upon more greatly by the conflict between the Rule 6 Party's evidence and the Appellant's, but the point is that there were points that needed to be dealt with, including at the Inquiry itself, which demonstrates that this is not a costs case.

2.8 Not following the advice of Officers does not mean that you are in the realms of unreasonable behaviour, providing you can provide a reasoned explanation as to the basis of the case put forward by the Council.

2.9 The evidence in respect of an effective Chord which may be possible, does not address whether such a Chord could robustly emerge from the RNEP process and GRIP process, or important scheme parameters such as line speed, which could lead to future prejudice once the Network Rail work is complete. Neither Miss Reid's closing, nor the evidence of Dr Raiss, deal effectively with the line speed issue. The outcome of the optioneering process, which will result from the assumptions put into the Network Rail work, is not known. There could be a design speed of 40-50 mph, and there could be a case that the grade II* listed Bordesley Centre could be in question. To say otherwise is to defy the possibility that that is the case. It is a clear and recognisable possibility and it is not unreasonable to advance that possibility. It has not been excluded, because we simply do not know what the position will be. So again, another reason why the position taken by the Council in this case is not unreasonable. Network Rail correspondence has expressly left open line speed, land take and alignment in a way that leaves clear scope for prejudice. It is that which has led to this Inquiry. This has been explained in the written evidence for the Council and the

position of the Council in respect of concession from Mr Sweeney is set out in Closing. This is, was, and remains a reasonable position to take.

3. The Appellant's Counter Response[4]

3.1 Whether or not the written evidence of the Council plainly crossed the threshold to resist the application for costs is not the point. The examples of unreasonable behaviour in the PPG relate to unreasonably defending appeals. The Council's written evidence did not come up to proof and it was on that basis that Mr Sweeney conceded, in cross-examination, that planning permission should be granted.

3.2 It is not simply a case of identifying an impact, even if that could be established. The PPG is concerned with whether a reason for refusal is substantiated, which involves the exercise of planning judgement, weighing any impact against the benefits in the planning balance. Following cross-examination, the Council has no evidence whatsoever, either professional or from Members, to support the proposition that planning permission should be refused. That is not a reasonable position to pursue. The impacts identified in the Council's closings and in the costs rebuttal are not based on any objective evidence and are unreasonably put.

3.3 For the reasons set out the Appellant's closings, the Council's suggestion that there is a real possibility of prejudice is not consistent with the evidence given. Mr Sweeney was specifically asked about what objective evidence he had to support an argument that there was even a suggestion of potential prejudice at the slightest end of scale. He could not point to any. It is not just the absence of demonstrable prejudice, it is the absence of any evidence as to potential prejudice. Having listened to the evidence as it emerged during the Inquiry, Mr Sweeney conceded that planning permission should be granted. That clearly justifies this application for costs.

3.4 In relation to the position of Network Rail, the Appellant relies on its closings to deal with the point made, but the points put do not assist the Council. The agreed position was that there was no objection from Network Rail. Even if its response was equivocal, which is disputed, the local planning authority was the decision maker. It had a duty to assess the evidence available to it and come to a decision. Mr Sweeney listened to all the evidence at the Inquiry and was taken through the Network Rail responses. At the end of that, he conceded that planning permission should be granted. The professional Officer who wrote the committee report, and the Interim Director of Inclusive Growth, expressly dealt with those consultation responses and advised Members that the evidential basis for resisting the application was slim and that it would be unreasonable from a planning perspective to do so. Irrespective of what Network Rail says, there is an independent duty on the local planning authority to use its planning judgement. All of the evidence now is that planning permission should be granted. The Council's continued opposition on this basis is therefore unreasonable.

3.5 It is suggested that criticism of the Council's evidence as speculative is unjust. However, Mr White accepted in terms that the evidence was speculative. Not,

[4] Oral submissions at the event

as suggested by Mr Grant, because it was speculating in an informed way, but because as Mr White expressly accepted in cross-examination, that there was no objective evidence in his written submissions to support the allegation of prejudice/potential prejudice. Again, even that were wrong, Mr Sweeney listened to that evidence and still agreed that planning permission should be granted, underscoring the fact that the Council has no evidence now to suggest the contrary.

3.6 Both the AECOM report and the MM21010 Report demonstrated that an effective scheme for delivery of the Chord could be developed alongside the appeal site, underscoring the fact that the Council had no evidential basis for concluding that there would be prejudice/potential prejudice occasioned by the appeal scheme. The AECOM report was specifically requested by Officers following deferment of the application by Members. The parameters for that work were determined by the Council and, as accepted by Mr White, there was no technical challenge to it conclusions.

3.7 The point about the station was not material to the Council's case in the written evidence of Mr White and takes the Council's case no further either. It only materialised when the Rule 6 Consortium produced, very late in the day, an alignment which passed through the appeal site, showing the station as being retained. In any case, the agreed evidence of Mr White was that he had no evidence to contradict the proposition that it would be possible to retain the station in situ and construct an effective scheme for delivery of the Chord.

3.8 In relation to process and optioneering, it is not good enough to assert that there might be some unidentified future prejudice, at some unidentified point in the process, for some unidentified reason that is wholly unsubstantiated by evidence to the Inquiry now. The point about line speed takes the Council's case nowhere, as there is no evidence before the Inquiry that the proposition now advanced is even a possibility. In any event, even if the proposition were correct, that was not enough to convince Mr Sweeney. There is no evidence to substantiate the Council's position that permission should be refused.

3.9 In cases where Members depart from the advice of professional Officers, there needs to be an evidential basis for so doing. This is not a case where the evidence has pulled in different directions. The Council's professional planning Officer and the Interim Director recommended that permission should be granted, with the Interim Director pointing out that failure to do so would be unreasonable given the paucity of objective evidence to support that position. The Council instructed Mr White to defend the appeal, but he was unable to point to any objective evidence that took his case beyond speculative generalised assertions to substantiate the impact that he identified. Mr Sweeney was similarly instructed. He listened to all the evidence and came to the view in cross-examination that, in his professional view, planning permission should be granted.

4. Inspector's Conclusions

4.1 The Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

4.2 Members of the Council's planning committee rejected the advice of the planning Officer and the Interim Director of Growth that permission should be granted, with three reasons for refusal cited on the Decision Notice. Reasons 2 and 3 relate to the absence of a mechanism to secure the provision in perpetuity of the affordable housing and affordable workspace offer. As set out in the Statement of Common Ground, it was a matter of agreement that those matters could be addressed by a planning obligation and the Council did not pursue that matter at appeal. The fact that it was later agreed that the matter could be dealt with by conditions were the appeal to succeed, has no bearing on the costs application and no unnecessary or wasted expense was incurred in that regard. That leaves the first of the reasons for refusal, which informed the main consideration in the substantive Report.

4.3 Messrs White and Sweeney, who appeared for the Council, produced relevant written evidence to the Inquiry to substantiate the reason for refusal at issue. The application for costs stems, in essence, from the answer of Mr Sweeney to a question put during cross-examination when he accepted that, having heard the evidence as it emerged during the Inquiry planning permission should, in his professional opinion, have been granted. However, that answer needs to be considered in the broader context of what went before in terms of questioning and in light of the nature of the main consideration in the circumstances that prevail in this finely balanced case.

4.4 As captured by the Statement of Common Ground, the various facets of the matter in dispute as:

> '*whether the appeal scheme could preclude delivery of the Camp Hill Chord and whether 'any potential' for prejudice to its delivery, insofar as it may present a design constraint on the project, is a material consideration such that planning permission should be refused.'*

4.5 During cross-examination, Mr Sweeney had previously accepted that, based on the evidence of Mr White and Mr Moore to the Inquiry, there was no *objective* evidence of prejudice to delivery of the Chords which might bring it into conflict with the development plan. I was on *that* specific premise that he expressed the view that planning permission should have been granted. That, in my view, misses the point in light of the difficult position in which all parties to this appeal find themselves, absent any meaningful engagement at the Inquiry by Network Rail in terms of any detailed design or construction information, and given the stage that the business case for the Rail Hub and the Chords is at.

4.6 In particular, I am mindful that the answers of others, particularly of Mr White, were more nuanced than implied in the proposition put to Mr Sweeney by Miss Reid. For instance, whilst Mr White confirmed in re-examination that he had accepted that the prospect of the appeal site being required to facilitate delivery of the Chords was theoretical, he also referred to the other alignments in a similar vein, explaining that one could not realistically move from theoretical impacts until the process had reached the 'Developed' RNEP stage gate, at which point one would have an alignment in sufficient detail to be able to make specific choices about land issues, environmental impacts, costs and constructability, which basket of matters would need to be weighed against the benefits of the scheme. That stage is some two years away yet. He also

confirmed in re-examination, that one could not rule out the scheme affecting the Chord at this stage.

4.7 Each of the three main parties to the appeal took a different approach to the question of prejudice in this case. Unsurprisingly, the question put to Mr Sweeney was based on the arguments that informed the Appellant's approach, as set out in the main Report. The Council's position was that the Appellant's approach set an artificially high test, arguing that a proper approach was '*multi-faceted',* encompassing a number of different matters, maintaining that it is sufficient that the development '*realistically could be pre-emptive*' to delivery of the Chords. As can be seen from the main Report, I largely agree with that.

4.8 Given the stage that development of the Chords is at, it simply cannot be said definitively, at this point in time on the evidence available, that the appeal scheme *would* prejudice delivery of the Chords. This is because, given that a final route alignment is yet to be duly arrived at, no such evidence can be shown. That would require evidence and information which is yet to come forward into the public domain. The corollary to that, is that neither can it be definitively said, at this point in time on the evidence available, that the appeal scheme would definitely not prejudice delivery of the Chords. Given that conundrum, it seems to me that what Mr Sweeney's concession did not do was materially undermine the case made by the Council to the Inquiry. His answer was simply a response to the narrow point put to him.

4.9 Mr Sweeney fully appreciated that reliance on vague, generalised assertions can amount to unreasonable behaviour as defined by the Planning Practice Guidance. In this case however, the possibility of frustrating delivery of the Chords arises in the event that the processes currently underway reveal prejudice. That is a legitimate concern to hold. What the answer in cross-examination showed, was that any potential prejudice is future prejudice, not currently identifiable prejudice. Given the regional if not national importance of the Chords scheme, it was not unreasonable for the Council to make the case that it did, a case that could not, in the circumstances, rely on anything other than theoretical implications directly associated with the potential tie-in point of the northern end of the Chord. In that respect, they were not vague or generalised. I found them to be well-articulated, notwithstanding that the Council could not, for obvious reasons, draw on objective evidence to support its case. I am reminded, in this regard, of the traditional aphorism, that absence of evidence is not necessarily evidence of absence. I consider that the concession made by Mr Sweeney was not unreasonable in the circumstances that prevail in this case. The concerns of the Council were clearly and objectively explained and I am satisfied that no wasted or unnecessary expense has been incurred in this regard.

5. Recommendation

5.1 For the reasons set out above, I recommend that the application for an award of costs be refused.

Jennifer A Vyse
INSPECTOR

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.