

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Claim No. AC-2025-BHM-000410



AC-2025-BHM-000410

HHJ EMMA KELLY

B E T W E E N :

THE KING
on the application of
ALISON PARR

Claimant

-and-

BIRMINGHAM CITY COUNCIL

Defendant

-and-

LOVELL PARTNERSHIPS LTD

Interested Party

CONSENT ORDER

BEFORE Her Honour Judge Emma Kelly considering the matter on paper on 29th January 2026

UPON the grant by the Defendant, on 7th November 2025, of outline planning permission under application reference 2025/01204/PA (“the Planning Permission”);

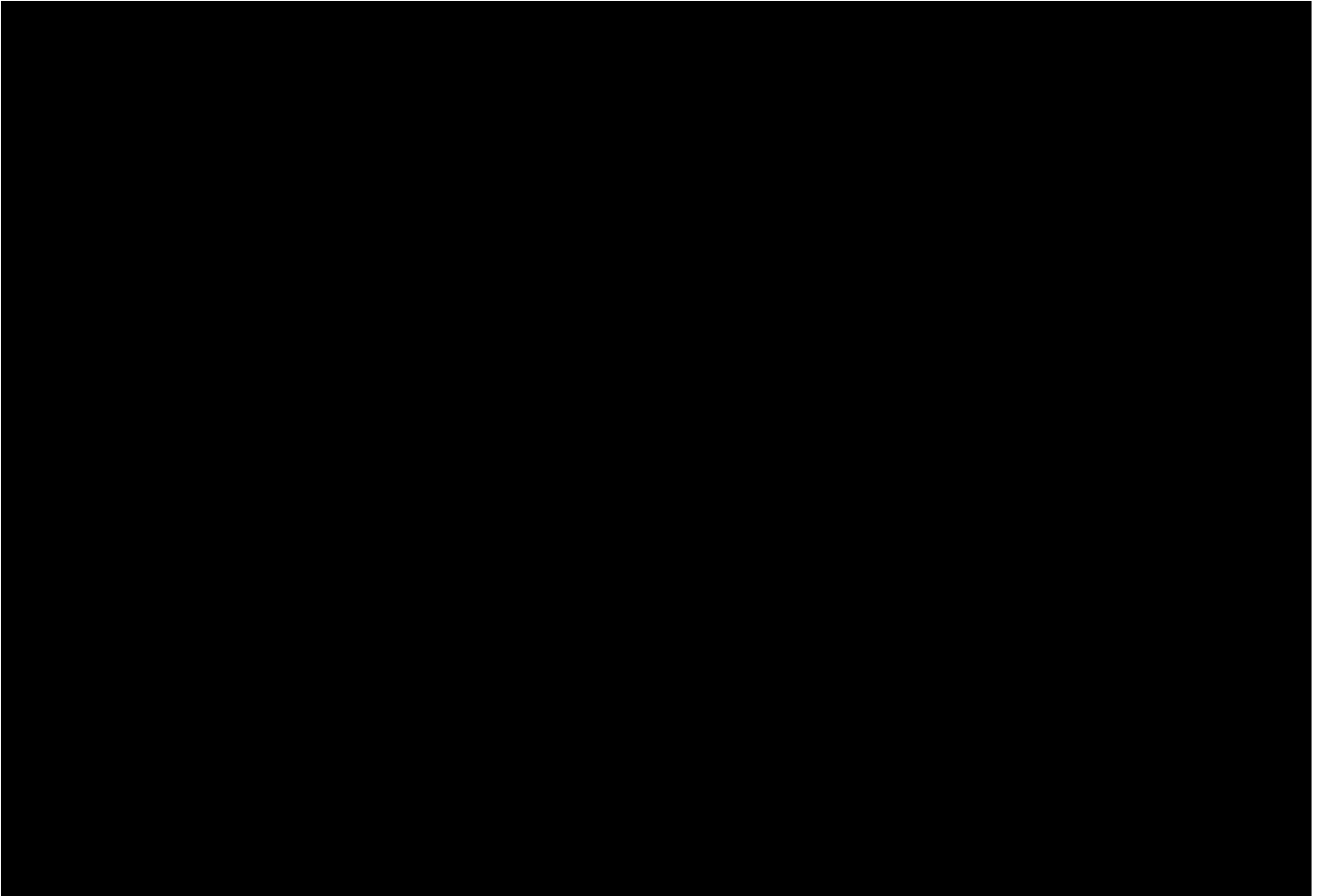
AND UPON the Claimant having, on 18th December 2025, filed a claim for judicial review challenging the lawfulness of the Planning Permission;

AND UPON the agreement by the parties that, for the reasons set out in the attached Statement of Matters Relied On, the claim falls to be allowed, and the Planning Permission should be quashed;

IT IS ORDERED BY CONSENT THAT:

1. The claim in judicial review is allowed on Ground 3.

2. The Planning Permission is quashed.
3. The Defendant pay the Claimant's costs, to be assessed if not agreed.
4. There be detailed assessment of the Claimant's publicly funded costs in accordance with the Civil Legal Aid (Costs) Regulations 2013 and CPR r.47.18.



PD54A STATEMENT OF MATTERS RELIED ON

1. By this claim in judicial review, the Claimant challenges the decision of the Defendant of 7th November 2025 to grant planning permission under application reference 2025/01204/PA at Land at Bells Lane, Druids Heath, Birmingham under the following description of development (“the Planning Permission”):

“Outline planning permission for a phased mixed use development at Druids Heath. Works include demolition of existing structures and associated works, (including the removal of existing pylons). Redevelopment to provide residential uses (Use Class C2 and C3), commercial, business and service uses (Use Class E), local community and education uses (Use Class F), and sui generis uses (including drinking establishments, hot food takeaways, launderettes, live music venues) together with landscaping, public realm, cycle parking, car parking, highway and infrastructure works”

2. The application for planning permission was made by the Defendant, as landowner of the site in question, to itself. The application was granted following a Committee meeting at which voting was tied 6-6, pursuant to the casting vote of the Chair.
3. One issue of importance in the determination of the application was the level of affordable housing to be secured as part of the Permission. Policy T3P1 of the Birmingham Development Plan requires residential developments of more than 15 dwellings to deliver 35% of the proposed units on site as affordable housing, subject to any demonstrated viability constraints. The application for planning permission sought to secure 11.4% of the units on site as affordable housing.
4. In support of their position that that figure represented the maximum quantum of affordable housing which could be provided having regard for the viability position, the applicant submitted to the Defendant an independently assessed Financial Viability Appraisal (“FVA”). The FVA was specifically referenced within the Officer

Report at paragraphs 7.13-7.15, and taken into account in paragraphs 7.17-7.29 within the discussion of affordable housing more generally. It was also referenced in the context of discussion about whether contributions to healthcare (paragraphs 7.93-7.94), sports provision (paragraphs 7.49-7.52), and education (paragraphs 7.35-7.36) should be sought from the applicant.

5. A full copy of the FVA (“the Full FVA”) was not made available to the public by the Defendant. In its place, a short Executive Summary of the FVA was published on the Defendant’s website. In relation to viability, the Executive Summary simply recorded as follows:

“This viability assessment has shown that the Proposed Development is unviable when compared to the target profit level of 16.53% on GDV (at a profit of 0.04% on GDV). This is when a fixed land value (BLV) of £1 is adopted.”

6. As noted at paragraph 9 of the witness statement of Tessa Burwood, prior to the Committee meeting, the Defendant received a number of representations from local residents seeking the publication of the Full FVA. Members were advised that the publication of an Executive Summary satisfied the Defendant’s obligations.
7. On 18th December 2025, the Claimant filed the instant claim, challenging the grant of planning permission on three grounds, as identified at paragraph 4 of her Statement of Facts and Grounds. Ground 3 alleged that the Defendant had erred:

“by failing to make available for inspection the full Financial Viability Appraisal, the Council breached s. 100D and s. 100F of the Local Government Act 1972, as well as the requirements of procedural fairness and national policy.”

8. Pursuant to section 100D of the Local Government Act 1972 (“the 1972 Act”), members of the public are entitled to inspect any “background papers” prepared for the Officer Report to Committee (which they are also entitled to inspect under section 100B). The Full FVA constituted a “background paper” within the meaning in section 100D(5).

9. That entitlement does not extend to “*exempt information*”, pursuant to section 100D(4)(a). “*Exempt information*” is defined in Schedule 12A to the 1972 Act. Under paragraph 3 of Schedule 12A, the following is “*exempt information*”:

“Information relating to the financial or business affairs of any particular person (including the authority holding that information).”

10. Schedule 12A also contains qualifications to the definition of “*exempt information*”. Paragraph 9 of Schedule 12A provides that the following is not “*exempt information*”:

“Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission or permission in principle pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.”

11. As identified at paragraph 2 above, the applicant for the Planning Permission was the Defendant, as landowner. The application was, as such, one for which the Defendant could itself have granted planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992. Accordingly, the Full FVA fell within the terms of paragraph 9 of Schedule 12, was not “*exempt information*”, and fell to be published as a “*background paper*” under section 100D. In failing to publish the Full FVA, the Defendant was therefore in breach of the requirements of the 1972 Act.

12. The next question arising is whether Parliament intended that a failure to comply with that requirement should lead to the invalidity of the actions which followed. In the context of the 1972 Act, that question depends on the facts of the individual case (per Dove J, as he then was, at [141]-[142] of *R (Worcestershire Acute Hospitals NHS Trust) v Malvern Hills DC* [2023] EWHC 1995 (Admin)). In light of (a) the significance of the issue of affordable housing to the overall merits of the scheme, (b) the importance of the Full FVA to the recommendations made within the OR in relation to affordable housing and several other issues, (c) the fact that publication of

the Full FVA had specifically been requested by a number of interested parties, and (d) the fact that Parliament has by paragraph 9 of Schedule 12A specifically identified the importance of transparency in decision-making where local planning authorities apply to themselves for planning permission, on the facts of the instant claim, that test is satisfied. Ground 3 is accordingly made out.

13. For the same reasons, it cannot be said to be highly likely that the outcome would not have been substantially different had the conduct complained of not occurred, pursuant to section 31(2A) of the Senior Courts Act 1981. Accordingly, the Planning Permission falls to be quashed.

14. That being so, it is unnecessary to examine the merits of the issues raised under Grounds One and Two of the Claimant's claim, and no determination or order is made in respect of either.