



*subject would give rise to a significant adverse effect on residential neighbours. This was either a determination akin to a finding of fact or it was a matter of planning judgement.*

2. *“Moreover, as is clear from reading the decision letter as a whole, his conclusions were based on evidence and analysis, and detailed reasons for them are recorded in the decision letter.*
3. *“The proposed challenge in this case is impermissible because:*
  - a. *No error of law is alleged or apparent*
  - b. *Neither is it alleged nor is it apparent that the Inspector took irrelevant matters into account;*
  - c. *What weight to attached to competing arguments or diversity of facts was a matter for him to weigh;*
  - d. *The challenge is no more than a disagreement with the decision;*
  - e. *The decision had a basis in evidence;*
  - f. *The challenge attempts an impermissible forensic deconstruction of the decision letter rather than a reading of it as a whole;*
  - g. *Ample reasons were given for the decision;*
  - h. *The decision lay within the range of decisions that a decision-maker was entitled to arrive at so that it cannot be said to be perverse or irrational.”*

2.5 The Claimant was also ordered to pay the Council’s costs.

2.6 However, on 9<sup>th</sup> August the Claimant filed and served a Request for Oral Renewal Hearing to reconsider the High Court’s decision to refuse permission for Judicial Review. Officers have been notified that the Secretary of State intends to resist the application for re-consideration and will seek to make oral submissions to the Court during the hearing.

2.7 The Council will also be resisting the application. However, if the Council’s attendance at any hearing is not required by a direction, it will be deemed to be voluntary. In that case, it is unlikely that the Council will be able to claim its costs for attending the hearing, even if the Council is successful.

2.8 The parties will receive two days’ notice of the hearing date. The Court guidance states that it usually takes three to eight weeks to receive a hearing date.

### **3.0 Lidl and Units 1-6 at Oldbrook Boulevard, Oldbrook, Milton Keynes**

3.1 A Judicial Review Claim was submitted by Tesco against an officer decision under delegated powers to approve a planning application for the demolition of buildings and the erection of a retail foodstore with associated parking, access, landscaping and associated engineering works (ref. 20/02498/FUL).

3.2 Further details on the particulars of the planning application and a copy of the pre-action protocol letter can be viewed on Public Access ([www.milton-keynes.gov.uk/publicaccess](http://www.milton-keynes.gov.uk/publicaccess)).

3.3 There were two grounds to the claim:

- a) failure to properly interpret Policy ER10 of Plan:MK; and
- b) failure to take into account Community Policy 1 of the Neighbourhood Plan.

- 3.4 The Council has conceded on ground 2 above, but not on ground 1. Therefore, the Council has agreed a Consent Order with Tesco, which will quash the planning permission and for the application to revert to the Council for re-determination. Counsel has also been appointed. The Consent Order also includes an agreement for the Council to pay Tesco's fees in the amount of £21,975.20 for their expenses in bringing the claim.
- 3.5 As a Consent Order has been agreed between the parties, the claim will be assessed on the papers by a High Court Judge and there will be no need for a hearing in the matter.
- 3.6 In respect of re-determination, Tesco have stated their view that there is a material conflict with a policy in the development plan and, as such, it should be determined by DCC. However, this would need to be assessed through the re-determination of the application and in accordance with the Scheme of Delegation. If the application was considered to be in material conflict with a policy in the development plan, it would need to be referred to DCC for determination.