

**IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF
LAND AT
ROMSEY AVENUE,
PORTCHESTER, FAREHAM.**

**APPLICATION FOR A PARTIAL AWARD OF COSTS
ON BEHALF OF THE APPELLANT**

1. This application for costs is made on behalf of the Appellant against the local planning authority, Fareham Borough Council [‘the Council’], pursuant to the guidance at Chapter 16 of the NPPG.
2. It is an application for a partial award of costs, as provided for by NPPG para 16-041, in respect of Reason for Refusal C.
3. It alleges unreasonableness on behalf the Council as to the substance of its case under RRef C, as provided for by NPPG para’s 16-031 and 16-49 (2nd and 3rd bullets).
4. It alleges that that unreasonableness led the Appellant to incur unnecessary or wasted costs, as required by NPPG para. 16-030.
5. It is made, in writing, before the close of the inquiry, having been presaged following the hearing of the highways evidence, in accordance with NPPG para. 16-035.
6. Following vociferous opposition by local residents on the grounds of impact on highway safety and parking conditions (reflected in 231 written objections on that topic), Council members imposed RRef C at the committee meeting, without support

from the Highways Authority or its own planning officers. At the time of the committee decision, there was no technical evidence that concluded there was an unacceptable impact arising due to the displacement of on-street parking by the scheme. Further, the Highways Authority had concluded that the scheme was acceptable in terms of both highway safety and the operation of the highway network. It left questions of ‘amenity’ to the Council.

7. Accordingly, the Council alleged that the displacement of parking would have an unacceptable ‘amenity’ impact, but it also went on to allege an unacceptable highways safety impact.
8. Subsequent to the appeal being lodged, the Council sought to assemble evidence to support its RRef C. It instructed Mayer Brown to undertake a Parking Displacement Study. On the basis of this study, Mr Philpot of Mayer Brown, on behalf of the Council, alleged two impacts: (1) an amenity objection arising from the ‘inconvenience’ of a certain number cars potentially being displaced; and (2) a highways safety objection based on movements of service vehicles.
9. The evidence of Mr Philpot was disputed by the Appellant; however, orally, Mr Philpot acknowledged that even *at its highest extent*, his evidence did not justify a finding that there was an ‘*unacceptable*’ highway safety impact, nor a ‘*severe*’ operational impact, and, as such, he acknowledged that there was no breach of para. 111 of the NPPF.
10. Under cross examination, the planning evidence of Mr Sennitt was that the operative policy DSP40(v) as regards ‘unacceptable...traffic’ impacts was not more stringent than para. 111 of the NPPF. Orally, therefore, he was constrained to accept that the Council’s own highways evidence (at its highest) demonstrated that the scheme is not contrary to DSP40(v) as regards ‘traffic’ on either highway safety or highway operation.
11. As such, the RRef C allegation of highway safety was not, and never had been, supported by the Council’s own evidence (as well as being contradicted by the statutory Highways Authority); the Council’s pursuit of that part of Ref C was

therefore unreasonable in its substance and the Appellant was obliged to incur unnecessary and ultimately wasted costs in considering and rebutting it.

12. With the Scheme's effects on highway safety and highway operation *not* in breach of policy DSP40(v), the Council fell back on the 'amenity' limb of RRef C, alleging the potential parking displacement (as quantified in its evidence at least) amounted to an 'unacceptable amenity' impact under DSP40(v) and that permission should be refused.
13. As noted above, the quantification of the potential displacement by Mr Philpot is disputed by the Appellant, but taking it *at its highest* [ie his Scenario 3], the most that can be said is that there are potentially 11 cars displaced [the 6 counted by Mr Wiseman plus the 5 extra that informs Scenario 3, based on 3rd party objectors' photographs], and that, of these, between 2 and 4 might be obliged to park more than 100m¹ from where they are accustomed (and none more than 180m²). The rest, ie between 9 and 7 cars, potentially move less than 100m, with, in each Round between 5 and 9 cars actually moving less than 20m - or not moving at all. [See Table 4 of ID14.]
14. In contrast to the 231 evidentially unsupported residents' objections on this topic, that quantification, by the Council's own highways expert, cannot reasonably be said to amount to a material, let alone '*unacceptable...amenity*' impact for the purpose of DSP40(v). To continue to pursue the 'amenity' limb of RefC was, therefore, unreasonable on behalf of the Council, *in the light of its own evidence*.
15. Further, if and insofar as it was reasonable to assert that the Council's quantification of potential parking displacement justified alleging a breach of DSP40(v) on 'amenity', that only leads one to the 'tilted balance' in NPPF para. 11(d)(ii).
16. Given the Council's own evidence as to the significant positive weight to be given to the provision of housing (in the context of a 5 year HLS shortfall), affordable housing (in the context of a significant and worsening delivery of affordable housing) and economic benefits arising from the scheme, it is not reasonable to conclude even the

¹ A figure suggested in xx of Mr Wiseman as some manner of a measure of unacceptability

² Max predicted by Mr Philpot in Scenario 3 is one car, in one Round, at 173.9

Council's worst case quantification of parking displacement (see para 13 above) amounts to an amenity objection *significantly* more weighty than the sum of those three undisputed social and economic benefits of *significant* positive weight.

17. As a result, the Council was unreasonable to pursue its RRef C in its 'amenity' limb, as justifying the refusal of permission, on its own evidence, even if accepted.
18. Regrettably, it appears most likely that Members were swayed by the extent, rather than the objective justification, of third party objection into imposing RRef C. The Council should have abandoned that RRef, at the very least once Mr Philpot's evidence was available. By not doing so, the Appellant has been obliged to incur unnecessary and ultimately wasted costs in considering and rebutting RRef C.
19. In consequence, the Appellant respectfully seeks a partial award of costs, being those costs associated with its evidence and consideration of RRef C, including the inquiry time devoted to that topic, for each and for both of the limbs of 'amenity' and 'safety'.

CHRISTOPHER BOYLE QC

19th August 2021

Landmark Chambers,
180 Fleet Street,
London, EC4A 2HG.