IN THE MATTER OF LAND TO THE SOUTH OF ROMSEY AVENUE, FAREHAM

AND IN THE MATTER OF AN APPEAL BY FOREMAN HOMES LTD UNDER SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PINS REF: APP/A1720/W/21/3271412
LPA REF: P/18/1073/FP

RESPONSE ON BEHALF OF FAREHAM BOROUGH COUNCIL

TO APPLICATION BY THE APPELLANT

FOR A PARTIAL AWARD OF COSTS

A. INTRODUCTION

1. This a response on behalf of Fareham Borough Council ("the Council") to the Appellant's application of yesterday's date for costs ("the Costs Application").

2. The Application is for a partial award in respect of reason for refusal (c)[1], alleging[2] breach of the second and third bullets of PPG paragraph 49[3], which state that examples of unreasonableness by local planning authorities include: (i) failure to produce evidence to substantiate each reason for refusal on appeal; and (ii) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

B. TIMING OF THE APPLICATION FOR COSTS

3. Paragraph 35 of the PPG section on costs[4] provides as follows:

> "Applications for costs should be made **as soon as possible, and no later than the deadlines below**:
> In the case of hearings and inquiries:
> - All costs applications must be formally made to the Inspector before the hearing or inquiry is closed, **but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry**. Any

[1] Costs Application §2
[2] Costs Application §3
[3] Paragraph: 049 Reference ID: 16-049-20140306
[4] Paragraph: 035 Reference ID: 16-035-20161210

such application must be brought to the Inspector's attention at the hearing or inquiry, and can be added to or amended as necessary in oral submissions.

- If the application relates to behaviour at a hearing or inquiry, the applicant should tell the Inspector before the hearing is adjourned to the site, or before the inquiry is closed, that they are going to make a costs application. The Inspector will then hear the application, the response by the other party, and the applicant will have the final word. The decision on the award of costs will be made after the hearing or inquiry.

For all procedures, no later than 4 weeks after receiving notification from the Planning Inspectorate of the withdrawal of the appeal or enforcement notice or other planning matter which is the subject of the proceedings, irrespective of procedure . An application for costs can be made by letter, or by using the Planning Inspectorate's application form.

Anyone making a late application for an award of costs outside of these timings will need to show good reason for having made the application late, if it is to be accepted by the Secretary of State for consideration." (Emphasis added)

4. The paragraph is therefore clear that applications for costs "should be made as soon as possible" and that "as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry".

5. The Costs Application relates to the substance of the Council's position on highways and amenity impacts, which was clear long in advance of the inquiry (rather than to matters which only emerged during the inquiry). There is no good reason why it was not made before the inquiry opened. It was finally sent to the Council and to me at 19:38 last night. This is outrageous and, contrary to the Appellant's position[5], clearly does not accord with paragraph 35 of the PPG. No explanation for the Appellant's delay has been provided, and it is a fair surmise that the timing of the Costs Application (from a professional and seasoned Appellant) was designed to divert the Council from a proper focus on its Closing Submissions. Costs are in the discretion of the Inspector, and the Costs Application should be refused on this ground alone, even if (which is not the case, as explained below) it were otherwise to have merit.

C. RESPONSE TO THE MERITS OF THE APPLICATION

6. The Costs Application is entirely misconceived. It is, in essence, simply an assertion that it was unreasonable not to agree with the Appellant's position on traffic and amenity. The Council's case on reason for refusal (c) (that there are traffic implications, albeit below the thresholds that would alone constitute a breach of NPPF §111 and DSP40(v), and amenity implications which

[5] Costs Application §5

are alone sufficient to breach policy DSP40(v)) is not only reasonable but strong, as will be fully explored in Closing Submissions.

7. The Council has not failed to produce evidence to substantiate the reason for refusal (second bullet of paragraph 49 of the PPG). Nor does that evidence consist of vague, generalised or inaccurate assertions unsupported by objective analysis. Quite to the contrary. It has provided very detailed, clear, accurate, objective evidence from respectable and experienced professional witnesses which amply support its case.

8. Paragraph 6 of the Costs Application asserts that at the time of the Committee decision there was no "technical evidence that concluded that there was an unacceptable impact arising due to the displacement of on-street parking by the scheme". However, the Technical Note at Appendix J to the Transport Assessment Addendum[6] was available, as was the consultation response of 19th December 2019 from the County Council, which stated that the Council as planning authority should satisfy themselves that walking distances to alternative parking spaces are acceptable on amenity grounds[7]. Much as the Appellant wishes to cast them aside, Members also had the views of large numbers of local residents and their own local knowledge. The decision to insert reason for refusal (c) was entirely reasonable, indeed wise, and it appears from §18 of the Costs Application that the Appellant does not consider it to have been unreasonable. Rather, the Appellant suggests unreasonableness in the light of Mr Philpott's evidence, but his evidence strengthened rather than weakened the Council's position, rightly undermining the unduly favourable impression created by the Appendix J Technical Note on which the common ground with the County Council was founded[8].

9. The Costs Application points to concessions made in oral evidence by Mr Philpott and Mr Sennitt. The making of concessions is an ordinary and helpful part of the inquiry process and is not evidence of unreasonable behaviour (quite the contrary). Moreover, contrary to the Appellant's position, the concession that safety and residual traffic implications alone do not

[6] CDA.32 Vol 4
[7] Philpott Main Proof §2.10 and CDB.13(b)
[8] CDD.3 at §4.3 to 4.4

breach §111 of the NPPF or DSP40(v) does not remove the reasonableness or force of the Council's case on reason for refusal (c), as will be fully explored in Closing Submissions.

10. The Appellant does not criticise the reasonableness of the Council's view that DSP40(v) is breached by the loss of best and most versatile ("BMV") agricultural land. Mr Brown accepted under cross examination that breach of DSP40(v) would mean that the Proposal was in breach of the development plan overall. The Appellant therefore does not criticise the reasonableness of the Council's view that the Proposal is in breach of the development plan overall (and this is putting on one side the compelling reasons for refusing permission on grounds (b) and (d)). Yet it proceeds under the assumption that traffic implications that on their own are below the thresholds under DSP40(v) can be ignored. That is an absurd position, which is contrary to the approach required by section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the PCPA"), contrary to Court of Appeal authority (***Redhill Aerodrome Ltd v SSCLG*** [2015] P.T.S.R. 274[9]) and wholly unreasonable.

11. It is perfectly reasonable (indeed compelling) for the Council to consider that DSP40(v) operates cumulatively, such that one does not silo off implications and consider them only individually. An overall judgement of the acceptability of the environmental, amenity and traffic implications is plainly required (or at the very least, such a view is plainly reasonable). Traffic implications which on their own are insufficient to breach DSP40(v) must therefore be considered cumulatively with environmental implications (which on the Council's case, which the Appellant accepts is reasonable, are on their own sufficient to amount to a breach of DSP40(v)) and amenity implications (which again on the Council's case are sufficient on their own to amount to a breach of DSP40(v)). The traffic implications that arise worsen the breach of DSP40(v), even though not sufficient on their own to constitute a breach of the policy.

12. Moreover, even if that were not the case, DSP40 is not the only policy in the development plan. Mr Sennitt's and Mr Philpott's views that Policies CS5 and CS17 were breached, that policies from the Emerging Local Plan were breached, and that policies from the NPPF were breached, were not (save §111 of the NPPF) challenged under cross examination, and have not been

[9] CDK.13 at [32]

categorised as unreasonable by the Appellant, nor could they be. In circumstances of a breach of DSP40(v) (a view which the Appellant does not categorise as unreasonable as a result of the BMV impacts) traffic implications do not, therefore, fall away but must be fully factored into the planning balance. The Appeal Proposal is in breach of DSP40(v) and this on its own is sufficient to render it in breach of the development plan, but the breach of the development plan is made yet more significant by the breach of other policies. Mr Sennitt's views on the weight to be given to policies other than DSP40[10] cannot be categorised as unreasonable, and the Appellant does not suggest this. But at §16 of its Costs Application the Appellant seeks to cast aside any proper planning balance and to persuade you to a balance that factors in all the benefits, but downplays amenity harms and ignores all other harms. That is conspicuously unreasonable and contrary to the approach required under section 38(6).

13. As for the assertions that it was unreasonable to consider that there would be an unacceptable, or even material, impact on amenity, Mr Philpott's and Mr Sennitt's evidence provides a compelling basis for finding that the impacts on amenity are very significant, and themselves give rise to a breach of DSP40(v). The Appellant evinces a worrying lack of concern for the amenity of local residents, for whom the very real displacement will be a new harm caused by the development. Amenity is a subjective and context-dependent issue and the very real and widespread concerns about amenity in this case strongly support the view that amenity will be very significantly harmed by the Proposal.

14. The Costs Application also wrongly proceeds on the basis that I suggested a 100m figure as a measure of unacceptability[11]. I did no such thing and nor did Mr Philpott or Mr Sennitt. The Council has been consistently clear that relying on the 200m threshold under the Lambeth methodology[12], or the 100m threshold under the North Somerset Parking Standards[13] is inapposite because they are aimed at residents of new developments, not at what is an acceptable level of displacement of existing residents. Mr Philpott and Mr Sennitt were both clear that significant harms to amenity would arise well below the 100m level of displacement. However,

[10] Proof §§9.3.4 to 9.3.6
[11] Costs Application footnote 1
[12] CDH.3 page 2
[13] Wiseman Rebuttal §2.11 and Appendix 1

it is telling that the 100m level is breached on numerous occasions under Mr Philpott's Scenarios 2 and 3, and that is of course not including existing displacement, which will push the numbers still higher. The reason I put the 100m figure to Mr Wiseman under cross examination was to show the absurdity of his position in considering the North Somerset standards more apposite but nonetheless considering that impacts on amenity were insignificant below 200m. That is an entirely different thing from what the Appellant suggests in footnote 1. Significant impacts on amenity can arise at much lower levels, as the County Council has recognised in the Agreed Statement of Common Ground[14] by raising the issue of amenity for the Council even in the context of the Appellant's inappropriately favourable approach to displacement.

15. For those reasons, the Costs Application is entirely devoid of merit. The Council's position on amenity and safety issues was conspicuously reasonable, indeed compelling, as will be explored in Closing Submissions.

D. CONCLUSIONS

16. For these reasons, I invite you to dismiss the Costs Application.

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19th August 2021

[14] CDD.3 at §4.4