

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

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

**APPELLANT'S REPLY
TO THE COUNCIL'S RESPONSE
TO
THE APPLICATION FOR A PARTIAL AWARD OF COSTS
ON BEHALF OF THE APPELLANT**

1. This Reply responds in writing, for the Inspector's convenience to the Council's Response received at 11.25 today. It does not rehearse the Application made.
2. First, as to timing of the application (para's 3-5), there can be no complaint. The Council emboldens a part of the guidance other than the actual requirement, namely that the application be made before the close of the inquiry. This has been done. In addition, the Council's advocate had advance warning of the prospect of a costs application following the hearing of the highways evidence, and advance sight of it in writing which is not a requirement. In an application such as this, it is appropriate to reflect on the evidence as heard (of both parties) before deciding whether seeking an award is appropriate.
3. As to the specific point in para.5 that the timing was 'designed to divert the Council from a proper focus in its Closing Submissions', I can assure Mr Helme that I have much too much respect for his abilities to imagine such a consequence would flow,

even if that had been my intention, which it most certainly was not. In any event, this is not a ground to resist a costs award on the substance of the Council's case. If the Council considered itself prejudiced by having to draft Closings and Costs Response, it could and should have asked for the time it needed.

4. Second, as to the substance of the Response (para's 6-15), it is the quality of the evidence which needs to be examined to see whether the Council's case on highway safety and residential amenity was reasonable.
5. On safety, Mr Philpot & Mr Sennitt's evidence was that there was no breach of para. 111 of the NPPF and, therefore, none of DSP50(v) 'traffic' as it was not more stringent than para. 111. The Council's evidence did not support the highways safety objection, therefore.
6. On 'amenity', Mr Philpot's *worst case* was 11 cars affected, with 2-4 each round moving potentially between 100m and 180m. That is not a quantification which justifies a reasonable conclusion of 'unacceptable amenity' impact under DSP40(v), still less a refusal in the face of the titled balance.
7. Praying in aid other categories of impacts (paras 10-12) does not assist to strengthen the Council's case on 'amenity'. It cannot be that 'acceptable impact x' added to 'acceptable impact y' makes 'unacceptable impact x'. Indeed, even a finding that y is an 'unacceptable impact' would not turn an 'acceptable impact x' into an 'unacceptable x'. Each must be unacceptable in its own terms before it can be added to the basket of DSP40(v).
8. As to para's 13 and `14 specifically, residents' concerns were quantified by Mr Philpot as being founded (worst case) on 11 cars affected of whom 2-4 might move 100-180m. That is not a reasonable foundation for a reason for refusal objection, however genuinely the resident's objection is felt.
9. 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

20th August 2021

Landmark Chambers,

180 Fleet Street,

London, EC4A 2HG.