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## Costs Decision

**by Lesley Coffey BA Hons BTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28<sup>th</sup> January 2022**

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### **Costs application in relation to Appeal Ref: APP/A1720/W/21/3271412 Land south of Romsey Avenue, Fareham, PO16 9TA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Foreman Homes for a partial award of costs against Fareham Borough Council.
  - The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for a residential development of 225 dwellings, a bird conservation area and area of public open space with all matters reserved except for access .
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

#### **The submissions for Foreman Homes**

2. The application was made in writing. The application is for a partial award of costs and relates to reason for refusal c), namely the effect of the proposal on highway safety and residential amenity due to parking displacement.
3. At the time of the decision there was no technical evidence that concluded there was an unacceptable impact due to on-street parking arising from the proposed development. The Highway Authority had concluded that the scheme was acceptable in terms of both highway safety and the operation of the highway network. The allegation of highway safety was not, and never had been, supported by the Council's own evidence. Therefore, the Council's pursuit of that part of reason for refusal was unreasonable in its substance. Consequently, the appellant was obliged to incur unnecessary and wasted costs in considering and rebutting it.
4. On safety, Mr Philpot & Mr Sennitt's evidence was that there was no breach of paragraph 111 of the Framework and, therefore the proposal did not breach DSP40(v) in relation to 'traffic' as it was not more stringent than paragraph 111. The Council's evidence did not support the highway safety objection.
5. In terms of 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 tilted balance. To continue to pursue the 'amenity' limb of reason for refusal c) was therefore unreasonable, in the light of the Council's own evidence.

6. As for the Council's view that policy DSP40(v) operates cumulatively, it cannot be that 'acceptable impact x' added to 'acceptable impact y' makes 'unacceptable impact x'. Each must be unacceptable in its own terms before it can be added to the basket of DSP40(v).
7. 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). Given the positive weight to be given to the provision of housing and affordable housing, as well as the economic benefits arising from the proposed development it is not reasonable to conclude that even the Council's worst-case quantification amounts to an amenity objection significantly more weighty than the sum of the undisputed social and economic benefits.

### **The response by Fareham Borough Council**

8. 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. There is no good reason why it was not made before the Inquiry opened. It was sent to the Council the evening before the last day of the Inquiry. This does not accord with paragraph 35 of the PPG.
9. At the time of the decision the Technical Note at Appendix J to the Transport Assessment Addendum was available. This stated that the Council as planning authority should satisfy itself that walking distances to alternative parking places are acceptable on amenity grounds. Members also relied on the views of local residents and their own local knowledge. The Council has provided very detailed, clear, accurate, objective evidence from respectable and experienced professional witnesses which amply support its case. Mr Philpott's evidence strengthened rather than weakened the Council's position on this matter.
10. Mr Philpott's and Mr Sennitt's evidence provided a compelling basis for finding that the impacts on amenity are very significant and themselves give rise to a breach of policy DSP40 (v). Amenity is a subjective and context dependent issue and the very real and widespread concerns about amenity support the view that it would be harmed by the proposal.
11. The appellant does not criticise the reasonableness of the Council's view that DSP40(v) is breached by the loss the best and most versatile agricultural land. A breach of DSP40(v) would mean that the proposed development was in breach of the development plan overall. The appellant proceeds under the assumption that traffic implications that on their own are below the thresholds under DSP40(v) can be ignored.
12. The Council's case on reason for refusal (c), namely 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 are alone sufficient to breach policy DSP40(v) is not only reasonable but strong.
13. It is reasonable for the Council to consider that DSP40 operates cumulatively. The traffic implications that arise worsen the breach of DSP40 although not sufficient on their own to constitute a breach of the policy. An overall judgement of the acceptability of the environmental, amenity and traffic implications is plainly required. Traffic implications which on their own are

insufficient to breach DSP40(v) must therefore be considered cumulatively with environmental implications.

## Reasons

14. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
15. The application is for a partial award of costs and is specific to highway safety issues and to the effect of parking displacement on residential amenity.
16. At the time the application was considered the Highway Authority raised no objection to the proposed development on highway and safety grounds. The proposal was supported by a Transport Assessment and a Transport Assessment Addendum that included a detailed Pedestrian/Cycle Audit that assessed the routes from the site to key destinations and proposed a number of mitigation measures are proposed. There was also a Road Safety Audit. The evidence that supported the view of the Highway Authority in relation to safety was extensive, thorough and compelling.
17. Whilst Council Members are not compelled to follow the professional advice of their officers they should have clear reasons for failing to do so. PPG states that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis can lead to an award of costs.<sup>1</sup> There was no objective evidence before the Council at the time it reached its decision and added a reason for refusal in relation to highway safety and the impact of displaced parking on amenity.
18. The Council put forward evidence at the Inquiry to support this reason for refusal, but Mr Philpott conceded that his evidence did not justify a finding that there was an 'unacceptable' highway safety impact, nor a 'severe' operational impact.
19. I find the inclusion of highway safety at reason for refusal c) in the absence of any substantive evidence to be unreasonable. This matter was addressed in Mr Wiseman's Proof of Evidence at and his Rebuttal Proof of Evidence, and occupied considerable time at the Inquiry.
20. The Highway Authority was clear that any implications of parking displacement on amenity was a matter for the Local Planning Authority. The impact of a proposal on amenity is a subjective matter. Although the Council Officers did not raise any concerns in relation to this matter, the Council heard from a number of residents at the Committee. Members of the Committee would also have local knowledge of the area. I consider that based on their local knowledge and having regard to the submissions from local residents the conclusion of the Committee in relation to the impact of parking displacement on amenity was not unreasonable, although I have reached a different conclusion on this matter.
21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in relation to conclude that the Council behaved unreasonably and gave rise to unnecessary

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<sup>1</sup> Paragraph: 049 Reference ID: 16-049-20140306

and wasted expense in relation to highway safety, and that an award of costs in relation to that part of its case is justified.

**Costs Order**

22. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Fareham Borough Council shall pay to Foreman Homes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the preparation of those parts of Mr Wiseman's Proof of Evidence and Rebuttal Proof of Evidence necessary to address matters of highway safety, and the time spent addressing this matter at the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to Fareham Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Lesley Coffey*

PLANNING INSPECTOR