IN THE MATTER OF

THE TOWN AND COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF

LAND AT SATCHELL LANE,

HAMBLE-LE-RICE,

EASTLEIGH.

COSTS APPLICATION

ON BEHALF OF THE APPELLANTS

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1. This is an application for Costs against Eastleigh Borough Council on behalf of the Appellants. In accordance with guidance, it is made ahead of the close of the inquiry and in writing. It follows the hearing of the highways evidence.

2. The application is for a partial award of costs, in respect of Reasons for Refusal 2 (accessibility) and, separately, Reason for Refusal 3 (congestion).

3. The application is made as to the substance of the Council's case in respect of those two and alleges that the Council has acted unreasonably in pursuing each of those two Reasons for Refusal. By doing so, the Council has caused the Appellants to be exposed to unnecessary and wasted costs, and the Appellants seek the whole of its costs in relation to Reason for Refusal 2 and, separately, Reason for Refusal 3.

Reason for Refusal 2:

4. PPG ID Ref. 16-049-20140306 identifies examples of unreasonableness as to the substance of the Council's case including:

- *Acting contrary to, or not following, well established caselaw; and*

- *Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*.

5. As the inquiry heard – and as expressly accepted by Mr Grantham in cross-examination – Reason for Refusal 2 is a precise re-run of the same point raised in respect of the previous 70 unit outline scheme, with no change in circumstances on the ground or in policy.

6. That point (ie concerns over pedestrian access to the secondary school and the health centre in the context of an unsafe walking route to the north) was rejected by the previous appeal inspector [CD8.1] at para's 33-42. As Mr Grantham accepted, nothing has changed on the ground or in policy since then. The matters he raised in his evidence on Reason 2 are those raised at the last appeal and that the scheme was found acceptable in that regard.

7. That alone gives rise to unreasonableness in the Council 'persisting' in its objection, as it has done so in this inquiry, as per the PPG advice. However, the unreasonable position of the Council is compounded by the fact that it challenged the inspector's determination on this matter in the High Court [CD9.1] and lost that challenge.

8. The High Court Judgement at para's 10 (3rd bullet), 25, and 28-36 make it abundantly clear that the same arguments – including specifically the relevance of the likelihood of schoolchildren taking one route or the other [see esp para 28 and 35] – were deployed before the judge, as deployed now in the current appeal.

9. The Council's challenge was rejected by the judge. That High Court ruling has expressly established that the previous inspector's previous rejection of the Council's very same objection made to this appeal was 'unimpeachable' [CD9.1, para 36].

10. To persist in the objection underlying Reason for Refusal 2 in these circumstances is an egregious example of unreasonableness on behalf of the Council as to the substance of its case, and the whole of the Appellants' costs in relation to Reason for Refusal 2 are claimed.

Reason for Refusal 3:

11. PPG ID Ref. 16-049-20140306 identifies examples of unreasonableness as to the substance of the Council's case including:

    - *Failure to produce evidence to substantiate each reason for refusal on appeal; and*
    - *Not determining similar cases in a consistent manner*

12. No congestion objection was raised by the Council or the County Council (the same officer, Mr Grantham) in respect of the previous 70 dwelling scheme. The current scheme is 61 dwellings, and will, necessarily, generate fewer trips onto the network.

13. Mr Grantham made it clear[1] that there were no changes to the highway network or traffic flows that he relied upon as 'change of circumstances' to justify, now, taking the congestion objection within Reason for Refusal 3 against the current, smaller scheme. Rather, he relied (see his proof para. 3.10[2]) on a position statement by HCC in March 2019 and the GE Aviation appeal decision [Wilde Appx 2].

14. Taking the first, Mr Grantham accepted[3] that the HCC position (ie that *no* additional development should occur until improvement works have been undertaken to Hamble Lane) was not a policy and, in any event, could not override the application of para. 111 of the NPPF. If a site passes para. 111, national policy is that it should not be refused on congestion grounds. It does not amount to an 'in principle' bar on the grounds of congestion.

15. Taking the second, Mr Grantham accepted[4] that (contrary to his proof at 3.8) the GE Aviation inspector did *not* make a finding that no development should happen on the Hamble peninsular until the improvement works had been undertaken. Mr Grantham accepted[5] that all the inspector had said was that, on the evidence before him, in the

[1] Grantham xic and xx, Day 3
[2] And confirmed in Grantham xx CBQC, Day 3
[3] Grantham xx CBKC, Day 3
[4] ibid
[5] ibid

absence of mitigation, the appeal before him would have a 'severe impact' and should not be permitted [see appeal decision 37-53, esp para 52].

16. Thus, on Mr Grantham's own oral evidence, the two 'changes of circumstances' he relied upon for now raising an in respect of congestion, did not justify the 'in principle' objection to any traffic-generating development, which he said Reason for Refusal 3 represented. The Council, once the matter was tested, therefore, had no evidence to support its objection. That is an unreasonable position as regards the substance of its case.

17. The unreasonableness of the Council's position was compounded, further, however, by Mr Grantham's espousal of a reading of para. 111 of the NPPF contrary to the clear wording of that paragraph. Rather than understanding the word 'severe' to be the test to be applied to the words 'residual cumulative impact' (ie of the development), he applied 'severe' as a test in relation to the existing baseline conditions. On his interpretation, if the existing conditions are 'severe' no additional traffic may be permitted and the results of models to quantify the impact of the development proposals made no difference to this 'in principle' objection[6].

18. That is a reading of para. 111 unsupported by its wording, or any interpretation by inspectors, the Secretary of State or the High Court that Mr Grantham could cite. Mr Wilde was correct to maintain[7] that using the word 'severe' for existing conditions was 'meaningless and misleading', given the fact that para 111 uses 'severe' as the test for judging *impact.* In fact, Mr Grantham himself in cross-examination accepted that the word 'severe' in para. 111 applied to 'impact', not baseline.[8] Further, he expressly accepted[9] that the inspector at the GE Aviation appeal had clearly (and correctly) approached the matter by assessing the severity of the residual cumulative impact of the development (see that appeal at para's 43-45, esp 45).

19. For clarity, the Closing Submissions for the Appellant cover Mr Grantham's erroneous comments as a non-expert on the technical aspects of the models presented, but he made

[6] Grantham orally, Day 3
[7] Wilde xx PSKC, Day 3
[8] Grantham xx CBKC, Day 3
[9] Grantham xx CBKC, Day 3

it clear that his case on Reason for Refusal 3 did not depend on the results of the modelling. Accordingly, this costs application is based on his assertion of an 'in principle' objection under Reason for Refusal 3, founded on two alleged changes of circumstances in support of such an approach, which he subsequently acknowledged orally were not such, and an approach to para 111 of the NPPF directly contrary to the wording of that paragraph and unsupported by any appeal or High Court authority.

20. There is, therefore, a failure to determine the congestion impacts of this smaller application in the way it determined the 70 unit scheme, and a failure to evidence Reason for Refusal 3 as imposed; that is unreasonableness as to the substance of the Council's case and the Appellants seek the entire costs of Reason for Refusal 3.

Conclusion:

21. The Council was unreasonable as to the substance of its case under Reason for Refusal 2; the Appellants seek the whole of their costs in respect of that Reason.

22. Separately, the Council was unreasonable as to the substance of its case under Reason for Refusal 3; the Appellants seek the whole of their costs of that Reason.

CHRISTOPHER BOYLE KC,

4th November 2022

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