

LAND AT SATCHELL LANE, HAMBLE-LE-RICE, SOUTHAMPTON

APPEAL BY FOREMAN HOMES LTD

RESPONSE OF EASTLEIGH BOROUGH COUNCIL TO THE APPELLANT'S

COSTS APPLICATION

Introduction

1. The Appellants have made two applications for partial awards of costs referable to Reasons for Refusal 2 and 3. The Council's principal response to those two applications is set out in, respectively, in paragraphs 73-94 and 95-101 of the Council's substantive Closing Submissions with regard to those Reasons for Refusal, and those paragraphs should be read as incorporated into this summary response.

Reason for Refusal 2

2. As you heard from Mr Grantham, the Local Highway Authority continue to object to the Appeal Application *inter alia* on the grounds that the Appeal Site does not provide a safe and sustainable access for pedestrians to the local Secondary School and Health Centre.
3. It is accepted, of course, that this was an objection that they also made at the previous appeal, when the Inspector agreed that this route was, indeed, unsafe (CD 8.1, paragraph 36):

"36. ... [T]he appellant's position was that the northern route was a safe walking route for those choosing to walk to the northern facilities. I have to disagree with that position. I walked the route, in both directions, on two occasions – once before the Inquiry and once at the conclusion of my formal site visit. The first visit was undertaken as dusk was falling. The road is unlit, possesses no footpaths for most of the route, and includes a number of tight bends. In many places there are steep banks which limit the ability of pedestrians to avoid oncoming traffic."
4. That, moreover, is a conclusion which the Appellants no longer contest (see: Wilde, paragraphs 2.2.1 and 2.8.2).

5. However, having decided that the route along Satchell Lane was unsafe, the previous Inspector went on to ignore this because there was “no policy requirement” for schoolchildren or patients to use it, and there was another route available, albeit one which was far longer (CD 8.1, paragraph 38):

“38. If the use of the northern part of Satchell Lane as a safe walking route to the facilities, especially the school, were a policy requirement and there was no alternative, I might have a very different view on this issue.”

6. With the greatest of respect to the previous Inspector, that is a remarkably strange decision. The obvious question to which his earlier conclusion gives rise not whether there was some “policy requirement” for anyone to use a shorter, unsafe, route, but whether vulnerable schoolchildren and/or patients would be likely to risk using that unsafe route, rather than take the much longer alternative. That, of course, is the question which another Inspector addressed, in very similar circumstances, in the Fareham decision letter to which Mt Grantham referred (Appendix MG6).
7. In raising that continued objection with you, the Council appreciate (of course) that it had been raised at the previous Inquiry and dismissed by the last Inspector; and that the legal challenge to that decision failed (CD 9.1). However, and importantly, this latter decision was on a point of law only, not the merits of the decision. You, of course, are fully entitled to come to your own conclusion on those merits, and are not in any way bound by the judgement of a previous Inspector provided you give good reasons for disagreeing with him. The legal position on this is unequivocal, as set out in my Closing Submissions at paragraphs 79-81.
8. Furthermore, and for all of the reasons given in paragraphs 82-94 of my Closing Submissions, there are compelling reasons to come to a different decision to that reached on the last occasion on this specific issue, including by reference to intervening changes of circumstance (although none need to be demonstrated to come to a different conclusion, as a matter of planning judgement - see: *King's Cross Railway Lands Group v London Borough of Camden* [2007] EWHC 1515 (Admin) (CD 9.2, paragraph 18):

- a. Firstly, the alternative route relied upon by the previous Inspector would effectively entail circumnavigating much of Hamble and walking an additional 2km. With all due respect to the previous Inspector, it simply defies common sense to believe that many (if any) teenage schoolchildren who have to walk to school on a dark and rainy winter morning, and who are already late, will take the longer route. It is blindingly obvious that many (if not all) will take the risk of the much shorter, but unsafe, route up Satchell Lane instead.
 - b. Secondly, whilst the previous Inquiry Inspector reached the view that he did, the Inspector who examined the recently adopted Local Plan come to a very different conclusion when considering the possibility of residential development over the road and at Hamble Marina. The previous appeal Inspector is not the only Inspector to have considered the acceptability of residential development in this broad location, therefore. Rather, it has subsequently, and very directly, been considered by a different Inspector.
 - c. Thirdly, to so decide would be completely consistent with the very recent decision reached by an Inspector in nearby Fareham (Grantham, Appendix MG6), as referred to in Mr Grantham's Proof of Evidence at paragraphs 2.20-2.23. That is a decision which post-dates the previous Inspector's appeal decision and is plainly supportive of the Council's position.
9. For all of these reasons, the Council was plainly reasonably entitled to raise Reason for Refusal 2; indeed, and especially so given that the safety of vulnerable people is at stake. Indeed, it would have been entirely remiss of them not to have done so. For all these reasons, the Appellant's application for costs with regard to Reason for Refusal 2 is entirely misconceived.

Reason for Refusal 3

10. As for Reason for Refusal 3, concerns about the impact of increased traffic on Hamble Lane have, of course, recently been considered in a recent appeal decision letter

concerning a proposal for residential development of the GE Aviation Site (Appeal Ref. 3255559, CD 8.2).

11. In dismissing the appeal, one of the key matters considered by the Inspector was that of highway impacts on Hamble Lane and nearby junctions. The Inspector held as follows:

a. In paragraph 37, he correctly noted that Hamble Lane provides the principal route from Hamble-le-Rice to the wider road network including the M27 and roads into and out of Southampton, and he went on to state that:

“Hamble Lane is subject to significant congestion at peak times, with a number of junctions experiencing capacity problems, particularly nearer to the M27 from Portsmouth Road northwards”;

b. In paragraph 45, he found that Hamble Lane is already congested and the development would result in increased queuing - the same true is true, of course, for the current appeal;

c. In paragraph 46, the Inspector stated that the proposed measures to mitigate this congestion indicated there would be a severe impact arising from development without that mitigation; and that even if the impact was less than severe, there would still be harm which was required to be mitigated and/or weighed in the planning balance; and

d. In paragraphs 49 and 50, the Inspector explained that there was no guarantee that impacts could be mitigated through proposed Hamble Lane improvement works, which marks a considerable change in circumstance since the previous appeal in 2018.

12. Mr Wilde’s response to this, as articulated in paragraph 3.1.8 of his Main Proof, boils down, essentially, to the argument that, even though the congestion in Hamble is already severe, one can happily add to that provided the additional impact of the new traffic is not, additionally and independently, also severe. However, that entirely

misses the point. Residents in Hamble already experience severe delays that are severe; and any additional traffic will exacerbate this situation further.

13. The Highways Authority objection in these regards accords entirely with any common sense reading of paragraph 111 of the NPPF, which expressly requires the refusal of permission on highways grounds if “the residual cumulative impacts” on the road network would be severe, words which plainly invoke consideration of the extant and the additional; and where the extant is already severe, adding to that only makes it even more severe (and the Appellants are offering no mitigation to address this).
14. Moreover, Mr Wilde’s alternative interpretation would lead to obviously absurd consequences. Developers could come forward, one after the other, each with proposals to add yet more traffic onto an already congested network, and argue that because their proposals did not, individually, have a “severe” additional impact, they were all acceptable despite their cumulative impact on roads which already suffered severe delays. For all of the reasons set out in paragraphs 99-100 of the Council’s Closing Submissions, that cannot possibly be right. Indeed, it is precisely to avoid that argument being made that paragraph 111 of the NPPF is worded as it is. To accede to the Appellants’ interpretation would entail an error of law.
15. For all these reasons, the Appellant’s application for costs referable to Reason for Refusal 3 should also be dismissed; it, too, is entirely misconceived.

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9th November 2022