LAND AT SANDOWN PARK RACECOURSE, PORTSMOUTH ROAD, ESHER

PLANNING INSPECTORATE REFERENCE: APP/K3605/W/20/3249790

INQUIRY PURSUANT TO SECTION 78 TOWN AND COUNTRY PLANNING ACT 1990

RESPONSE TO APPELLANT'S COSTS APPLICATION

ON BEHALF OF THE LOCAL PLANNING AUTHORITY

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1. The Appellant seeks a partial award of costs against the Council on three grounds:
    a. Refusal of planning permission on air quality grounds.
    b. Refusal of planning permission on heritage grounds.
    c. Production of a landscape proof of evidence.

2. The Council **strongly** resists the Appellant's costs application on all grounds.

Approach

3. The starting point is that the appeal process is intended to be costs neutral. In order to justify an award of costs, a party must demonstrate: (i) unreasonable behaviour on the part of another party and (ii), that the unreasonable behaviour has caused the other to suffer wasted expense.

4. Moreover, the statutory power to award costs only bites on the appeal process itself, see: s.250(5) Local Government Act 1972. It follows that the Secretary of State has no power to award costs for matters which have occurred otherwise than "at the inquiry", which the Council accepts embraces all aspects of the appeal process. In the Council's submission, the power to award costs against a local authority runs from the first act of the local authority in the appeal process. By r.4 Town and Country Planning (Inquiries Procedure) (England) Rules 2000 the first act of the local authority is the filing of an appeal questionnaire. It follows that action which pre-date the filing of the appeal questionnaire is outside the ambit of the costs regime.

Air Quality

5. The Council made plain that air quality formed no part of its case within its Statement of Case.[1] The Council repeated that point at the CMC on 20 August 2020, that is recorded in the Inspector's note on 21 August 2020:

   "In relation to air quality, Dr Bowes confirmed that this did not form part of the Council's case. He would not be calling a witness on this topic, nor would the planning witness be covering it."

6. It is simply wrong to assert that the Council has maintained harm to the air quality during the public inquiry. No evidence was led on this matter and no case was put to the Appellant's witnesses to this effect.

7. Whilst the reason for refusal did reference air quality, the matter was clarified in the Statement of Case and confirmed at the CMC not to form a part of its case.

8. In any event, the Appellant's evidence was not that there was no harm to air quality, rather there was not a "significant" impact.[2]

9. The Council did not therefore act unreasonably within the appeal process.

Heritage

10. The Council has never said there would be an adverse effect on the significance of heritage assets. The reference to DM12 Development Management Plan (2015) in the decision notice was plainly an error. That was clarified in the Council's Statement of Case in any event.[3] Had the Appellant clarified this matter with the Council prior to launching its appeal, it would have avoided the wasted costs of a further statement. On the application of normal costs principles, the Appellant has therefore failed to take steps to mitigate its loss, rather has apparently sought to chase-up costs to take advantage of an error on the decision notice.

11. The Council did not therefore act unreasonably within the appeal process.

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[1] SOC3/2, para.6.38.
[2] SOC1/17 – Appendix 8 – Air Quality Statement of Case, para.4.3.2 & 6.1.2.
[3] SOC3/1, para.6.66.

Landscape

12. The Council has consistently maintained a character and appearance objection to the appeal scheme, as well as that there would be an adverse impact on the openness and purposes of the Green Belt. This was made plain within the reasons for refusal and the Council's Statement of Case. The Appellant was therefore on notice that it would be put to proof on its case that the impact on the character and appearance of the area and the openness of the Green Belt was acceptable. It was therefore to have expected detailed evidence on the impact on the townscape character, visual effects and openness.

13. Whilst it is true the Council did say at the CMC that it would not submit a Landscape and Visual Impact Assessment (and technically it did not, it submitted a Landscape and Visual Appraisal[4]), the substantive differences between what the Appellant expected and what the Council in fact did are significantly overstated. The Appellant would have known a proof was likely to arrive at different judgments to the Appellant and, potentially, take methodological criticisms. Moreover, the Appellant was told in advance of evidence that the Council wished to rely on five additional view-points. The Appellant could have expected to receive this information from the Council within its character and appearance proof of evidence.

14. Whilst it is true the Council's proofs exceeded 3,000 words, they were accompanied by summary proofs, in line with the *legal* requirements of r.13(2) Town and Country Planning (Inquiries Procedure) (England) Rules 2000. The Inspector's note indicated that proofs should not exceed 3,000 "if possible". Regrettably, it was not possible to adequately explain the Council's case in fewer than 3,000 words. Indeed, neither has the Appellant. Its landscape, visual and Green Belt case spans the LTVA, the Green Belt Statement and the Green Belt Review, even before one considers the Statement of Case and proofs of Mr Clarke and Mr Connolley.

15. The PINS Procedural Guide is not law. It describes itself as "guidance only with no statutory status".[5] In any event, the Council complied with the PINS Procedural Guide, it submitted a Statement of Case (within an extended deadline expressly agreed with the

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[4] An LVIA is a document to support an Environmental Statement to identify effects which are "significant", see GLVIA3, para.1.1.1.

[5] PINS Procedural Guidance, para.1.1.1.

Appellant[6] and the Planning Inspectorate). The Statement of Case, was indeed a "succinct statement supporting the reasons for opposing development" which highlighted the "differences between the evidence supplied by the Appellant".[7] In particular, the Statement of Case made plain that the Council disputed that the openness of the Green Belt was preserved and that the character and appearance of the area was unacceptably harmed.

16. Accordingly, the Council did not behave unreasonably within the appeal process. In any event, the Council's conduct did not put the Appellant to any expense which it would not otherwise been expected to have incurred in order to have responded to the Council's case.

CONCLUSION

17. The Council has not behaved unreasonably as alleged or at all within the appeal process. Moreover, even if it has, the Appellant has not been put to expense which it would not otherwise have been required to incur, in order to prudently prepare for the appeal in response to the Council's Statement of Case.

18. The Council therefore submits that the costs application should be refused.

ASHLEY BOWES

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30 November 2020.

[6] See email from Wakako Hirose to Paul Falconer 2 June 2020 @ 18:36.

[7] Annexe J, J.3.1.