

PLANNING APPEAL BY A.C. GOATHAM & SON

Outline planning permission for up to 1,250 residential units, a village green, a local centre including a 2FE primary school, a 60 bed extra care facility, a 80 bed care home, village centre, village green, and associated access

LAND OFF PUMP LANE, LOWER RAINHAM, KENT ME8 7TJ

Appeal Ref: APP/A2280/W/20/3259868

App. Ref. MC/19/1566 Inquiry opened: 15 February 2021

OUTLINE RESPONSE OF APPELLANT TO COSTS APPLICATION (PARTIAL AWARD)

1. The costs application is strongly resisted, in full. It is respectfully submitted that there is no proper basis to make the partial award, when the background to the coming forward of the Appellant's further transportation mitigations, is understood. The Council's application elects not to convey the full, relevant background. Moreover, the Council's application enlarges what has been the actual consequence of transportation matters having been adjourned.
2. The Inspector is respectfully invited to note the following, which may be amplified, as appropriate:
 - a) The December 2019 outputs (CD12.10) merely comprised headline MAM outputs. Unsatisfactorily, no adequate explanation was given by the Council of what was included within the MAM modelling. It will be noted that Mr. Jarvis (in XX) was also unable to confirm the relevance of the sensitivity tests (Medway's Costs application; paragraph 7), which is symptomatic of the wider inability (or unwillingness) to explain that the Appellant has had to confront, over a considerable period;
 - b) CD 12.1 incorporated, at the time, the correct mitigation - but not the correct access strategy. In consequence, the resultant outputs of the MAM

modelling remained uncertain on their face (and unreliable) from the Appellant's perspective. That was an entirely reasonable, if not inevitable, reaction. This error was in fact not corrected until CD12.3 was received by the Appellant on 4.1.21 (para 7(2));

- c) It had been communicated to the Council, clearly and throughout, that MAM modelling outputs were considered unreliable, and that MAM inputs were not agreed. All references made to the Appellant considering impacts, as described in the Transport Assessment, derive from the Council's own conclusions arising from the Appellant's own modelling (in the complete absence of any clarity on the appropriateness of the MAM modelling). The Appellant's position has been consistent throughout;

- d) The additional modelling had in fact arisen as a direct consequence of new information coming forward from the Council: see section 2 of Jarvis' rebuttal, whereupon further detail of local model validation was provided. This evidence, in turn, reasonably gave the Appellant room to address its concerns regarding model outputs, unrelated to baseline validation, and which disclosed inaccuracies within the model run itself, and in terms of junction modelling. The very first time that the Appellant was provided with any visual outputs of any queuing data from the MAM was in Mr Jarvis's PoE (figure 3 and 4: pages 35-36). This was responded to in headline terms in Tucker's rebuttal: see para 6.4 page 10. However, it was not until the validation issue was adequately clarified by the Council, belatedly, that it reasonably became apparent to the Appellant that further mitigation might be worth considering, based on solely on the MAM outputs. This mitigation was sensibly advanced at inquiry, in order to best assist the Inspector in order to more fully understand the differences of the outputs, in the expectation of narrowing issues at Inquiry. This was therefore a responsible way forward. Tucker's letter of 28.2.21 sought to further aid this process, by requesting a comparison of model outputs for

the Inspector's benefit – but this has not been forthcoming from the Council (para 12);

- e) The approach adopted by the Appellant leading up to the adjournment could and would have been avoided had the Council been adequately transparent, and at a sufficiently early stage, regarding the way MAM was 'generating' the queuing it suggests might occur. This was not so however, and this approach is yet to be adequately explained (para 16);
- f) The mitigation proposal is substantial (para 21);
- g) The mitigation could not reasonably have been conceived at the time of the application. At that stage, all that the Appellant had been provided with was a very headline, inadequate, power point presentation (CD12.10). TN3 had been prepared by the Appellant on an approach that had been agreed with the Council. At the meeting on 22.01.20, Medway undertook to respond on that assessment - but no response has ever been received by the Appellant. This is in fact representative of the approach taken by the Council throughout the application, which has regrettably meant that helpful (and reasonable) discussion, on all issues relating to the application, has been made far more difficult, indeed, if not impossible, by the Council's election not to engage, or at least engage fully and promptly (para 23(2));
- h) The additional time taken up at Inquiry has been 2 days, only. Originally, transportation matters had been programmed for 3 days, as a broad guesstimate (with the possibility of 4 days). In the result, transportation did occupy 4 days, reasonably. This was the most likely window for the transportation session in any event, even had the original Inquiry timetable been proceeded upon (para 23 (5)).

On behalf of the Appellant

27 April 2021