

LAND AT PUMP LANE, RAINHAM

REPLY TO APPELLANT'S RESPONSE TO COSTS APPLICATION
ON BEHALF OF MEDWAY COUNCIL

Introduction

1. This reply should be read together with the written application for costs made on 23rd April 2021. It does not replicate those submissions. Instead, it responds to the specific submissions raised in the Appellant's outline response of 27th April 2021, which were amplified in brief oral submissions on 28th April 2021.
2. **First**, the Council does not accept that the Appellant's account¹ of the liaison between the parties about the highway modelling is accurate. An overview of the correspondence between the Council and the Appellant's highway consultants ('DTA') is set out in Appendix I, pp230-236 of Mr Rand's Proof. It is noticeable that this account was not challenged by the Appellant in cross-examination. By way of example only:
 - (a) It is not correct that the Appellant was only provided with the December 2019 outputs/PowerPoint [CD12.10] prior to determination of the application (para 2(a) and (d) of the Costs Response). Shortly after that presentation was provided DTA requested specific information concerning the MAM inputs, which was provided to them on 19th December 2019, see pp232 of Rand Appendix I.
 - (b) It is not correct to suggest that no response was received in respect of TN3 (para 2(g) of the Costs Response). TN3 was discussed within a meeting on 22nd January 2020, with further responses being provided by email in February 2020, see pp232-234 of Rand Appendix I.

¹ Made in the costs response, as well as the Appellant's closing submissions at paras. 209-213

3. **Second, and in any event**, the accusations that the Council failed to adequately liaise with the Appellant are entirely irrelevant to the issue at hand. Even if they were accurate (which they are not) this provides absolutely no justification for the Appellant's decision to proposed substantial² additional off-site mitigation mid-Inquiry, let alone the day before the highway's evidence was due to be heard.
4. **Third**, the suggestion that the additional mitigation was only proposed as a response to MAM's identification of queuing and, in particular to Mr Jarvis' PoE, figures 3 and 4 (paras 2(d) and (3) of the Costs Response) should be rejected. It is demonstrably false for the following reasons:
 - (a) The Appellant's central case is that the MAM outputs are not accurate. It is therefore wholly inconsistent for the Appellant to suggest at the same time that the catalyst for the additional mitigation was the outputs of the MAM;
 - (b) Mr Jarvis, fig. 3&4 illustrates queuing on the A2. Yet the additional mitigation includes proposed amendments to the Lower Rainham Road/Yokosuka Way roundabout. Therefore, the suggestion that these figures were the catalyst for the additional mitigation is a non-sequitur. Further, even on the Appellant's case, there is no explanation as to why the additional mitigation was proposed some four weeks after Mr Jarvis PoE was served;
 - (c) As Mr Rand highlighted in his PoE (Rand, paras 4.19-4.24), the Appellant's own modelling in TN4 [CD12.6] (January 20201) highlighted that a number of the junctions which became the subject of the mitigation were operating at, or over, capacity. Thus, even on their own case, at this stage the Appellant knew - or at least ought to have known - that additional mitigation was required.
5. **Fourth**, the suggestion that little, if any, by way of unnecessary or wasted costs were incurred as a result of the additional mitigation being proposed at a very late stage (para 2(g) of the Costs Response) is simply wrong. The additional mitigation did not simply result in extra Inquiry sitting days, it also led to the substantial wasted and unnecessary costs outlined in para. 23 of the costs application.

² As the Appellant accept is the case, see Costs response, para 2(f)

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