SECTION 78 OF THE TOWN & COUNTRY PLANNING ACT 1990

AN APPEAL IN RELATION TO LAND BOUNDED BY HOAD WAY AND M4, AND HIGH STREET, THEALE

BEFORE: Inspector J P LONGMUIR

APPEAL REFERENCE: APP/W0340/25/3360702

APPELLANT'S REPLY TO COUNCIL'S APPLICATION

INTRODUCTION

1. This is the reply to the Council's misconceived application for costs. Instead of reflecting on the fact that they have been unable to defend the first reason for refusal, it would appear that the Council's application is made on the basis that it was a defensible reason to maintain against the proposal.

2. The timeline in relation to this case that is relevant to the reply is as follows.

   a) Application made – 24 January 2024, Validated 14 February 2024
   b) Officer Report – 27 March 2024
   c) Decision Notice – 28 August 2024
   d) Appeal lodged, date of Statement of Case – February 2025
   e) Council's Statement of Case – April 2025
   f) Examiner's Report – 8 April 2025
   g) Statement of Common Ground – 13 May 2025
   h) Inquiry evidence exchange – 20 May 2025
   i) Rebuttal Evidence – 7 June 2025
   j) LPR adopted – June 2025
   k) Inquiry opened – 17 June 2025
   l) Inquiry closed – 24 June 2025

3. The Council's fundamental complaint appears to be solely related to the challenge to their <u>supply</u> evidence, particularly alleging it goes 'beyond' what was contained in the Appellant's Statement of Case dated February 2025. At the time of the lodging of the Appellant's SoC, there was no examiner's report, no adopted LPR and no SoCG.

SUBMISSIONS

4. It is difficult to understand the logic and reasoning behind the Council's application, but the following submissions are made in reply. **First,** the Council fails to appreciate that it is incumbent on them to defend *their* reason for refusal. At the time of the Decision Notice, 28 August 2024, they were claiming to have a supply of employment sites across the District for the next 10 years. This is some **10 months** prior to the adoption of the LPR which confirmed the significant shortfall discussed at the inquiry.

5. Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 provides,

> "*where planning permission is refused, the notice* ***must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision."*** [emphasis added]

6. The Planning Inspectorates guidance to planning appeals states the following,

> "1.3.2. *The reasons for refusal should be* ***clear and comprehensive and if the elected members' decision differs from that recommended by their planning officers it is essential that their reasons for doing so are similarly clear and comprehensive.*** *Clear reasons for refusal will help continued discussions and may mean that agreement can be reached.*[1]

7. In the PPG guidance on costs, we are also given examples of unreasonable conduct on the part of the LPA. A key component is the '*prevent or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.'* The first reason for refusal plainly stands in the way of accepting the principle of development on the basis that there is sufficient supply to cover the next 10 years. This is despite Mr Pestell repeatedly telling the inquiry about the quality of this development, its unique position next to a major highway junction, its ability to deliver immediately, and its connection to the grid and the availability of the drainage and sewage capacity. Again, none of this is cured by highlighting (and then misrepresenting) the evidence presented by the Appellant to challenge the Council's failure to have a more coherent position.

[1] Procedural Guide: Planning Appeals – England, Updated March 2021

8. **Second,** as to **paragraph 4** of the Council's application, this is the response.

a) The Appellant is entitled to challenge the sites the Council relies upon at any time, provided it adheres to the relevant guidelines and deadlines that govern the appeal process. The fact that it was not specific to what was interrogated in the inquiry does not change this starting point. It is for the Council to demonstrate it has a robust and sufficient supply, independent of what the Appellant presents to the inquiry.

b) The Appellant is entitled to challenge the Council's position at any time, particularly when the facts might be shifting. Especially given the LPR was adopted within days of the opening of the inquiry. As an example, only at the inquiry did it emerge that only 0.9ha of the wider 5.1ha of ESA1 is available. When the Appellant was preparing its statement of case and right up until the proofs were being exchanged, the LPR was yet to be adopted. This means that at the material time the Council's claim were just that, claims yet to be officially accepted by the examiner. And even then the facts changed.

c) Finally, the citing of these sites with 'no adverse comment' does not mean that the Appellant endorses their deliverability, which is for the Council to demonstrate, not for the Appellant to validate. And this was never an issue that could be addressed once and for all, it is a living reviewable matter that requires repeated checks and evaluation.

9. The Council complains that it was not until **15 May 2025** that it was put on notice about the Appellant's challenge on deliverability.[2] The complaint is not understood especially when one has regard to the timeline as set out above. **First**, the Council accepts that the Appellant consistently said, and certainly before the deadline for proofs, it was challenging deliverability of sites. **Second,** the review of the supply position is not a static one, and it does require regular review, and this has been vindicated by the position as updated on ESA1. Giving the Inspector the best available evidence. **Third,** it is trite to keep repeating that this is about the Council's own case and requires the Council to demonstrate that the sites it relies upon can be delivered. **Fourth**, in order for Inspector Longmuir to reach a sound and clear judgement, he needs to be kept abreast the latest position on sites. And usually the best person to do that is the Council.

[2] Paragraph 5-12

10. **Finally**, these are not 'new lines of argument' at all and it is very hard to understand the Council's submissions on this. The Appellant is offering a site that's ready to deliver now and one of the spurious reasons for rejecting it is based on, mainly, reliance on sites that are unlikely to deliver what they promised, or certainly not deliver for a significant period of time. The Inspector needs to have that information in order to properly calibrate the worth of the appeal site and its full context.

11. Notwithstanding this basic misunderstanding, the Council accepts that they had an opportunity to present evidence to challenge the position put forward by the Appellant (para 9). And yet complain that the Inspector was keen to hear the latest position on supply (para 12). Again, the Council lacks a basic understanding of the position when it comes to evidence at inquiry on supply matters. In housing land supply evidence, for example, the updates on a site can often be provided right up until planning witnesses present their evidence. This is entirely normal and rational. There is nothing unreasonable about this.

12. The other failure to have a basic understanding relates to commentary on sites that the Council seek to rely upon. The Appellant pointing out that some of the sites might be restricted to E.g. (iii)/B2 uses (i.e. ESA3 and ESA5) or that ESA6 lies within a Minerals Safeguarding Area, faces some highways and contamination challenges and is affected by a nationally critical oil pipeline that is subject to the Control of Major Accident Hazards Regulations 2015 (COMAH) and will require a buffer, is not new evidence and cannot be properly categorised as such. Pointing out these limitations places each site in its rightful context, and its deliverability credentials can thereby be properly scrutinised.

13. At each turn, the Inspector has allowed the Council to respond and therefore there has not been any allegation of prejudice to any party. Even in Mr Pestell's final rebuttal issued during the inquiry (ID6) little evidence was provided. For instance, in response to Mr Powney's Rebuttal Proof that the remaining land at ESA4 appears to be covered by a planning application by the incumbent waste use, Mr Pestell responded with '*while Grundon own the site the Council understands neither parcel is for their own use.'* This statement was not evidenced and appears contrary to the material on the Council's own planning applications website. The applications by Grundon Waste appear to be for a

workshop, vehicle storage, repair and maintenance. Without details to contrary it is fair to assume this is to service their own fleet of vehicles. If not, the application is clearly not for standard I&L premises regardless of who is the intended end user.

14. Mr Pestell and the Council were always going to face scrutiny on both supply and need questions. However, it was clear throughout the inquiry that their focus was almost entirely on protecting a minimum needs estimate based on an historic trend that their own ELR notes has led to a supply constrained market. In terms of supply, whilst the Council acknowledge a significant need shortfall across the Local Plan period, they have sought to undermine its significance by reaching the unevidenced conclusion that all its 18 year Local Plan supply will come forward in the near term. This is the fundamental issue that they continue to fail to confront.

15. If it is advanced, now, that scrutiny of supply was completely unexpected, and that the expectation was nothing further would be said post the Statement of Case – then this is a matter of the Council's failure to comprehend the burden placed upon them by the inquiry process. It may seem expedient to now suggest that the further (and completely expected challenge) to the Council's evidence amounts to 'unreasonable' behaviour, but this is both illogical and itself unreasonable.

CONCLUSION

16. Ultimately, this application fails for four reasons. The **first** is that it is for the Council to demonstrate *how* its supply is going to happen and whether it is realistic. It is not for the Appellant to disprove it, but it is entitled to challenge it.

17. **Secondly**, the supply position is a constantly shifting position that must be reviewed and the Council accepts it knew that the Appellant was intending on doing the same in its POE. The Council accepts that it had plenty of time to respond and was afforded every opportunity to do so as part of the inquiry. Crucially, the changing nature of the supply position was vindicated by the Council's late concession on ESA1. It would have been a dereliction on the part of the part of the Appellant to not have brought this to the Inspector's attention, and his decision would have been the poorer for it.

18. **Third**, Mr Pestell's instructions should have always included the clear expectation to robustly defend the Council's supply evidence. If he expected otherwise, that's a matter of competence for him and the Council. It is not evidence of unreasonable behaviour on the part of the Appellant seeking to challenge the Council's position.

19. In any event, the first reason for refusal was not one which should still be defended as part of this inquiry. This was the basis of the Appellant's own application for costs.

20. **Fourth**, is also quite curious that this application for costs, despite it being purportedly based on an omission from the statement of case, was only intimated after the Appellant lodged its application and sent it to the Council in advance. It is not a serious complaint and it is not based on credible grounds. If it were, it would have been foreshadowed much earlier in the process.

21. Conversely, the Appellant's costs application fell due when the Council's planning witness – on the last day of evidence – conceded significant points on the first reason for refusal. Making that the first opportunity to contemplate making an application for costs. To this end, the fact that the Council decided to pursue this application at all, still less once it was on the receiving end of the Applicant's, is in of itself unreasonable.

22. For all these reasons, this application should be dismissed.

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