**LAND AT CAROUSEL PARK, BASINGSTOKE ROAD,
MICHELDEVER, WINCHESTER,
HAMPSHIRE, SO21 3BW**

**RESPONSE ON BEHALF OF THE APPELLANTS TO THE
LPA APPLICATION FOR COSTS**

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1. The LPA have made a written application for a partial award of costs, dated 27th November 2023. That application is based on the following substantive points:

    a) In respect of Ground (a) – the scope of the appeal only became clear at the Inquiry;
    b) In respect of the 'legal grounds' (b), (c), (d), (e) and (f) – allegedly each and all are entirely without merit.

2. The Appellants resist that application as being unmeritorious, for the following reasons.

Application for Partial Award on Ground (a) Matters.

3. The LPA submissions are set out at §8-9 of their written application for costs, and presumably relate only to EN1.

4. The Appellants refute the assertions contained therein; they are factually incorrect. As a consequence the application must fail.

5. A response to the PCNs would have foreshortened the appeal process (§8) – that is not the case. Notwithstanding that the PCNs were not served on all, or even many of the residents of the Appeal Site, the extensive evidence of those residents, given on oath, would still have to have been given orally, such evidence forming the very basis of the Appellants' case in respect of personal need, lack of alternatives, health and education circumstances, Article 8 rights, the UNCRC Article 3 rights and the Public Sector Equality Duty. It is not credible to suggest that such evidence would not have been required.

6. It was only at the Inquiry that the scope of the Appellants' ground (a) case was made out, a narrower use than that alleged in the Notices (§9) – that is incorrect. In the SoC of WSPA at §5.1 – 5.5 the scope of the appeal was clearly limited to a G&T site. That should be uncontroversial. The SoC provided by Green Planning Studio Limited for the majority of the appeals (dated July 2022) stated that planning permission would be sought for the use alleged, that being a residential caravan site, and in the details of the material considerations that would be relied upon they are all largely related to G&T sites, with the exception of limited reference to 'affordable housing'. However GPSL came off record relatively soon after and WSPA took over the appeals. At PoE stage it was clear that what was being sought by way of the EN1 deemed application was planning permission for the breach alleged, a 'residential caravan site', albeit one limited by condition to G&T. If the LPA were unclear of the position at SoC stage, they should have been completely aware of the case being advance by PoE stage. It is wrong to state that the substance of the EN1 ground (a) case did not become clear until the Inquiry commenced.

7. It is entirely proper for the Appellants to amend their case during the Inquiry process, and did so at the first opportunity. That is not unreasonable behaviour.

8. The time spent addressing 'affordable housing' in the PoEs is de minimus at its highest and not sufficient to warrant an application for costs on the basis of the Appellants quite reasonably focusing their case at the appropriate time. There was NO inquiry time spent on either 'affordable housing' or conventional housing issues.

9. The application for an award of costs in respect of the EN1 ground (a) appeal should be rejected.

Legal Grounds - (b), (c), (d), (e) and (f).

10. Local planning authorities often rely upon the submission that appellants advance grounds of appeal that have no real prospect of success (§10). That is more often than not predicated on an overconfident belief that the authority cannot be wrong, but the prevalence of success appeal decision, particularly in the case of G&T where the overall success rate on appeals has been very high for many years, demonstrates that such a high handed position by local authorities is unmerited. The same allegation is made in this matter. Merely because the LPA strongly believe their position is correct does not make the Appellant's position unmeritorious or, more importantly, unreasonable.

11. ***Ground (e)*** (§2) – pejoratively described as a "*confected distraction*", the application on this ground has no merit. There was a clear doubt at the outset that some of the site residents did not receive the Notices. They were the clear instructions to the planning consultants instructed and that has been borne out in evidence. It is entirely right in those circumstances to raise ground (e) in the very short statutory appeal period allowed. Subsequent investigations and evidence have revealed that there remain a number of residents, and owners, who did not receive the Notices and it is no answer to rely upon the evidence of some residents to assert that other residents would probably have come to be aware of the Notices. It is of relevance that the LPA chose to withhold the highly relevant fact that several of the Notices which were posted by recorded post to the registered owners of the Appeal Site plots were returned. There has been no explanation for this worrying lack of candour, and this mendacious behaviour is reason alone to reject the ground (e) cost application. In any event, whilst there remains that reasonable doubt as to adequate service then the ground (e) appeals are reasonable.

12. The relevant issue is whether the residents and/or owners who were not served with the Notices became aware of them in the statutory four week period sufficient to allow

then to lodge an appeal. There are a number who have not and it is a planning judgment as to whether they have suffered substantial prejudice. It was and remains entirely reasonable for the Appellants to rely upon ground (e) appeals. By no measure can the Appellants' approach be found to reach the very high threshold of unreasonable behaviour. This application is entirely unmeritorious and petty and should be rejected.

13. ***Ground (b)*** (§11) – There is no misunderstanding ion the part of the Appellants as to the role of the planning unit in appeal process. As set out in the Appellants' Closing Submissions, the Appeal Site is not one large, uniform residential caravan site with either a single or general mixed use in which all of the activities are related to each other and are neither functionally nor physically separated (the key 'Burdle Principles'). It is a series of individual private plots, occupied by most unconnected people, with no communal activities. It is no more a single planning unit then is the Metro Centre in the Church Commissioners case. In XX NG asserted that it was "*easier*" to treat the Appeal Site as a single planning unit. Unfortunately, when applying the law the ease of the desired solution is irrelevant, what matters is the legality. Unequivocally, each individual plot, and each individual appeal represents a single planning unit, one with neither physical connectivity with the other plots nor functional connectivity, the actually uses carried out by each individual Appellant and occupier is not functionally related to other Appellants or occupiers, the very core basis for the finding of individual planning units. NW was unable to address this issue in XX. The reality is that the approach of the Appellants is the correct lawful approach, the approach of the LPA is one of convenience, and incorrect as a matter of law.

14. The ground (b) appeals were entirely justified as the Appeal Site is not a single planning unit. Each individual Appellant is entitled to a decision on their own appeal which relates only to their own pitch, without, necessarily reference to other activities elsewhere on the Appeal Site. This was precisely the approach taken by the LPA in the 2010 notice and the two subsequent Inquiries. It was never in question that the Appeal Site comprises a number of different planning units, applying the 'Burdle Principles". The LPA have never attempted to offer an explanation as to why they

have changed their approach and are now adopting an entirely contradictory approach, other than it is "*easier*". In that context, the ground (b) appeals were entirely justified. However, taking a pragmatic approach and on the agreement of all of the resident occupiers, the Appellants have offered a pragmatic solution to the ground (b) appeals to allow the EN1 ground (a) appeal to be considered in the round, as a single site. This does not diminish the fact that the ground (b) appeals were brought on a proper understanding of the law, applied to the relevant facts, rather than an approach founded in convenience.

15. The ground (b) appeals were not bound to fail, were entirely reasonable to raise and merely because the LPA fail to understand what amounts to the correct approach in law, and thus consider the ground (b) appeals unmeritorious, that does not amount to unreasonable behaviour on the part of the Appellants. The application for a partial award of costs on the basis of the Appellants ground (b) appeals is bound to fail, it is entirely unmeritorious.

16. ***Ground (c)*** (§12) – There is clearly a conflict between the PD rights applying to the Appeal Site providing for the right of enclosure and fences and the condition preventing sub-division which by its very nature seeks to prevent reliance upon PD rights. The LPA have never engaged with that conflict, they simply ignore it. Unless there is a condition on a planning permission expressly removing PD rights they remain available to users of the Appeal Site. There is no such condition. A fence used for the purposes of sub-division may in one sense be a breach of condition, but it may also benefit from deemed planning permission, which would over-ride that condition. In these circumstances the Appellants are right to rely upon ground (c) and the LPA still do not make any attempt to reconcile the obvious conflict arising out of the wording of condition 11 on the 2003 Permission and the extant PD rights.

17. ***Ground (d)*** (§13) – The Appellants' ground (d) appeals are not "…*another diversionary tactic*…" and did not take up "…*valuable inquiry time and resource*…". Indeed, they took up almost no Inquiry time whatsoever. It might be reasonable to suggest that more time is being taken up min dealing with the associated costs application. As a matter of fact there were walls, fences, buildings and hardstandings

and sub-division of plots were carried out or erected on the Appeal Site in excess of 10 years prior to the issue of the Notices, as confirmed in the drawings of Inspector Morden (see Closing Submissions for references). These elements of development are now immune from enforcement.

18. The breach of planning control alleges a change of use to a "*residential caravan site*" but seeks removal of the operational development associated with that unauthorised use. Reading the Notices as a whole, the operational development is part of the unauthorised use, and the Appellants are entitled to raise a ground (d) appeal against any attempt to require the removal of lawful operational development on the basis that it is lawful. That is not merely an exercise under ground (f). Consequently, the application for an award of costs on the basis of the claimed unreasonable behaviour on the part of the Appellants in relying upon ground (d) is entirely unmeritorious and should be rejected.

19. ***Ground (f)*** – No submissions are provided in respect of the claimed application for costs in respect of the ground (f) appeals. Consequently, the application must fail.

20. There is no merit in any of these applications for a partial award of costs, most or indeed all of which are simply petty, and all of the applications should be rejected.

Conclusions

21. It is asserted in conclusion that the Inquiry has been prolonged without good reason. The previous Inquiry took some 16 days to complete with two different Inspectors, this Inquiry has been completed, not in the 16 days originally listed but over 8 days (in reality only 6 full sitting days), comprising only four full days and four more or less half days. By any measure that is a surprisingly efficient outcome where so much oral evidence on oath was required to be heard from residents of the Appeal Site. The expert planning evidence has been addressed in an extraordinarily efficient manner, essentially over less than two days. It is somewhat difficult to conceive how that could possibly constitute a "*prolonged*" Inquiry. Both main parties have behaved entirely reasonably throughout the appeal process, there has been no unreasonable behaviour

and no wasted costs incurred, as a result of unreasonable behaviour or otherwise on the part of the Appellants.

22. The assertion (§15) that *"…[t]he main argument – about whether and if so how the site should be used by the Appellants – has been largely side-lined for long parts of this inquiry by the Appellants' indiscriminate pursuit of other hopeless grounds…*" is plainly and obviously both specious fallacious. The most significant part of the Inquiry has been spent establishing the personal circumstances of the Appeal Site residents under oath and providing for that evidence to be tested, an entirely normal process in these circumstances. Applications founded on such a false assertion cannot and should not be permitted to succeed.

23. The Inspector is respectfully requested to reject all of the LPA's partial costs applications.

Michael Rudd
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Manchester-Birmingham-Leeds
29th November 2023