RE LAND AT THAKEHAM MUSHROOMS SITE, STORRINGTON, THAKEHAM

COSTS REPLY TO THE COUNCIL'S COSTS APPLICATION

INTRODUCTION

1. This is a reply to the Horsham District Council's costs application. It is quite disappointing to read a costs claim that has fundamentally misunderstood both the basis on which such applications are made, but also the gravity of the situation facing HDC.

2. Following the HDC Local Plan Inspector recommending the withdrawal of the plan due to significant concerns around Duty to Cooperate, the Appellant sought to find further common ground. The Appellant alerted HDC of this fundamental change in circumstances, the fact that their Housing Land Supply position had reduced from 2.9 years to 1 year, and the need to revisit its planning balance in light of these crucial factors. This means that the latest Housing Land Supply tables considering the country places Horsham places them as being in the top 10 worst performing authorities in England.

3. On **15 May 2025** HDC rejected the offer to revisit this issue and reconsider its position as to whether they want to still defend the decision.

RESPONSE

4. Paragraphs 1.1-1.4 of HDC's costs application, in so far as it recites the guidance, does not require a response.

5. On the **addendum statement of case**, the Appellant was required to robustly address the issues in circumstances where there was a one day hearing listed to consider all the matters. The Appellant was entitled to submit the addendum statement of case in order to have the final word as part of the logical and standard approach to these hearings. HDC appears to accepted that the same statement contained '*an appropriate response'*. (2.4).

6. In so far as it is suggested that new evidence was introduced, HDC is clearly mistaken and shows another fundamental lack of understanding on how the process works. To that end, the following is said by way of a short response.

a) Any party at an appeal is entitled to submit Appeal Decisions on which they rely. These are public documents which assist inspectors to reach consistent decisions. In circumstances where a Council refuses to understand why its case is indefensible, it becomes necessary to demonstrate the same from different directions. In this case it was therefore necessary to do so via appeal decisions. The Council's immovable position remains undeterred, hence the need to make this costs application.

b) There is nothing in the guidance that forbids a party from relying on any appeal decision it wishes to bring to the attention of an Inspector.

c) To question the long term viability of the bus service in the way done by the Council is at the heart of the costs application. It has therefore become necessary to show our Inspector the approach taken by her colleagues, who have addressed this issue, in a way that fully supports the Appellant's case. This also serves to underscore the unreasonable nature of both the County and District Councils' cases.

d) The Council is unable to explain how it is prejudiced by this information. The Inspector has accepted it and they had ample time to consider it. If it had caused them to change their position and withdraw their objection, it just might be arguable that they were not alerted to information important to their decision making. But that is not the case here. The Council remains steadfastly stubborn about this position.

e) The appeal has not been held in abeyance. This is a short precautionary adjournment to allow for comments. The public consultation requested by the Inspector was not something called for by the Council as a way of addressing any potential prejudice. It is purely out of an abundance of caution that such a consultation has been necessary, led by the Inspector, in part fundamentally because of the sequential test precipitated by a change in national policy (more below).

7. On the **sequential test** undertaken by the Appellant, the Council's position is completely untenable. They do not seem to understand that a fundamental change in national policy, namely the new NPPF 175, precipitated the need for this testing to be done. It is quite hard to understand why the Council is objecting to action taken by the Appellant which not only is in line with national policy, it helps the Council's decision making. Crucially, it also ensures that the Inspector's ultimate decision is protected from legal challenge.

8. In terms of timeline, we had a fundamental change in national policy in **December** 2024. In **January** of 2025, the EA published new flood maps that required engagement with it specifically, but also in the context of a change of position in national policy. In **March** the Appellant's approached the Council to agree a methodology for an extensive piece of work that required doing quickly. It was presented in time for the hearing in **March.**

9. Again, in so far as the points taken by the Council on this issue is understood, the following is said in response.

   a) The Appellants alerted the Council about the incoming Sequential Test a month before the hearing, after taking legal advice on the recently updated NPPF 2024. This is not some simple piece of work that could be turned around in short order. It requires careful analysis and to date the government is yet to publish the relevant PPG on flooding;

   b) It is totally irrelevant that the Council did not request a sequential test. They were in legal error and failed to exercise their duties properly as the local planning authority in failing to apply its mind to this critical issue. Somehow their failure to act on these duties, having regard to national policy, is touted as a virtue to be noted by the Inspector. If the Appellant failed to act, principally driven by the Council's lack of request, then we would be jointly inviting the Inspector to fall into legal error;

   c) HDC agreed with the methodology to be used with the Appellant and they fail to actually acknowledge this, and their latest evidence seems to go behind this (more below). This is totally unreasonable, and was repeated again in the resumed hearing;

d) **The most shocking statement from the Council is contained at 2.13**. this statement is legally illiterate and fails to understand what NPPF 175 now requires. The stringent nature of triggering a sequential test is well understood in the industry now such that the presence of <u>any</u> surface water (never mind fluvial) on <u>any</u> part of the redline to be built on (including access) will trigger a sequential test. The Government is seeking to update the PPG on this because of how much <u>more</u> difficult the test has become. And yet, the Council states that the new NPPF is now '*loosening requirements of the previous NPPF, not increasing the requirements.'* This is just odd and unreasonable.

e) The fact that the government has now widened the scope of when a ST is required has led to a much more onerous application, especially when coupled with new EA flood maps published in January and March of this year. To say otherwise is to fundamentally misunderstand what national policy now requires. Mr Smith repeated this assertion again in the reconvening of the hearing. It remains HDC's position that a ST was not required at all. Again, how is any Appellant supposed to reach any reasonable agreement with this level of intransigence?

f) The Council cannot have it both ways either; they cannot maintain that the ST was never requested and is in any event unnecessary, whilst at the same time agreeing to the methodology and now claiming it should have been done at the application stage (2.14). All the while fundamentally misunderstanding national policy.

g) To further add to their lack of basic understanding of national policy, Mr Smith told the Inspector with great confidence that **exceptions test** was also engaged. The question specifically asked by the Inspector was whether it was engaged if she accepted the <u>Appellants</u> evidence on the matter. The answer to this is no.

10. The Inspector specifically asked if she had accepted the Appellant's case on the ST, does it mean that the exception test is engaged. NPPF 177 makes clear need for the exception test is highly specific, subject to Annex 3 of the NPPF. This is a site located within FZ1 which means that the exceptions test is not required under any circumstances. This is addressed in the Sequential Test evidence presented at paragraph 6.10. **Again, Mr Smith just does not understand this and his legally unsound contributions should be treated with extreme caution.**

11. The **Rapleys letter** was procured following a direct response to the Council's objections. It does not prejudice the Council, it does not require a response from them, and being consulted upon as part of capturing all the issues is not unreasonable.

FURTHER UNREASONABLE CONDUCT

12. Despite the unreasonable position taken by the Council as set out in the original costs application, their behaviour continues to be wholly unreasonable. To this end, since the hearing was adjourned, the Appellant has invited the Council to reflect on its position which has changed in a way that further undermines their case. These include;

    a) **Housing Land Supply Shortfall**: The Council's updated monitoring reports show a reduction from 2.9 to 1 year of housing supply, a serious and significant shortfall exacerbated by water neutrality issues.

    b) **Local Plan Withdrawal**: The Inspector's Interim Findings recommend withdrawing the Plan due to non-compliance with the Duty to Co-operate, which will inevitably delay the delivery of homes in planned locations. The plan led system is not working.

13. These two fundamental factors will lead to further delays to the delivery of needed homes. It underscores the critical benefit of a scheme advanced by a major housebuilder with a significant amount of homes, in a sustainable location, and which has a bespoke on site water solution unlike most places in Horsham District.

14. In light of these changes, in their addendum statement they seem to acknowledge their much weakened position. An yet, none of it makes a different to their ultimate case. If the Council was acting reasonably, they would revisit their planning balanced exercise and reach a different conclusion. They have refused to do so. This is totally unreasonable.

15. A reasonable LPA understanding this would be able to conclude that the benefits of this scheme plainly outweigh the harms (paragraph 11(d)(ii)). There is no proper engagement, still less an explanation, as to how these alleged harms outweigh the copious amount of benefits in such a dire local plan and housing land supply position.

CONCLUSION

16. Above all this, a **1 year housing land supply** is serious and puts Horsham as one of the worst authorities in England, and yet their unreasonable conduct means they are unable to make a reasonable judgement in the circumstances. This is totally unfair for an Appellant engaged in the process fairly and reasonably, attempting to find solutions with a district and county Councils keen to produce stumbling blocks at every turn.

17. For all these reasons, the Council's application, itself demonstrating unreasonable behaviour, should be wholly rejected.

18. The Appellant does not seek to repeat the points already made in the original application.

HASHI MOHAMED

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22 May 2025