LPA5.4

RE LAND AT CRAIG YR HESG QUARRY, BERW ROAD,
PONTYPRIDD, CF37 3BG

APPEAL REFS:
APP/L6940/A/20/3265358 (APPEAL A) and
APP/L6940/A/21/3282880 (APPEAL B)

RESPONSE TO COSTS APPLICATION
on behalf of
RHONDDA CYNON TAF CBC
as Local Planning Authority

INTRODUCTION

1. The Council disputes that an award of costs is justified in this case, whether as regards Appeal A or as regards Appeal B. The Council's determination of the Appeals was not unreasonable and in any event the decisions to refuse planning permission and the Council's actions to defend those decisions have not caused unnecessary expense. These appeals were inevitable, given the divergence of view between the Council and the Appellant on the acceptability of the proposals.

2. The Development Management Manual sets out relevant guidance in the Annex supporting Section 12. This includes:

"An award of costs may only be made where one party has behaved unreasonably and that unreasonable behaviour has led other parties to incur unnecessary or wasted expense" (para 1.2)

"Applications for costs must clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense" (para 2.4)

"Where a local planning authority has refused or proposed to refuse an application that is not in accordance with relevant development plan policy and no material considerations indicate that permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application" (para 3.8).

"Local planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers or received from statutory consultees. However, they are expected to show that they had reasonable planning grounds for taking a decision contrary to such advice and that they are able to produce relevant evidence to support their decision. If they fail to do so, costs may be awarded against the authority" (para 3.9).

3. The key issues in determining the costs application are whether the Council had *"reasonable planning grounds"* for refusing planning permission contrary to officer advice and whether the Council has produced *"relevant evidence to support"* its decisions. There is also a further issue as to whether the Council's actions have been demonstrated to be causative of unnecessary expense.

REASONS FOR REFUSAL

4. Obviously, the Reasons for Refusal are important and they should set out the *"full reasons"* for the decisions and specify all policies of the LDP relevant to the decisions (as per Article 24 of the DMP(W)O 2012). However, the Reasons for Refusal cannot be seen in isolation because they sit within the

statutory framework provided by s.38(6) PCPA 2004. As already rehearsed in the Council's Closing Submissions, no planning professional reading the Reasons for Refusal in Appeals A and B could be unaware that the concerns there expressed were also covered by policies of the LDP and that in any appeal against the decisions the Appellant would need to address the LDP and the requirement in s.38(6) PCPA 2004 for the decision maker to determine the appeals in accordance with the LDP unless material considerations indicated otherwise. The omission to specify the policy breaches relied on was a process issue but, in the context of a professionally represented Appellant perfectly aware of the statutory and policy framework, it was not unreasonable behaviour and it has not been causative of any unnecessary expense. The parties have agreed the relevant policies and have addressed them in their evidence.

5. That this would have happened in any event is apparent from perusal of the Appellant's Statement of Case for Appeal A (APP1/1), where in section 5.0 the Appellant addressed the policies of the LDP that (independently) it saw as relevant. These included Policies SSA 25 (para 5.3), CS10 (paras 5.14 and 5.16), AW5 (para 5.17), and AW10 (para 5.18). These are precisely the policies that have been in issue. Thus, notwithstanding the absence of references to the LDP in the Reasons for Refusal the Appellant knew that it had to address the LDP policies and did so right at the outset of the appeal process.

6. The fact that the parties have disagreed on whether the policies are complied with or not, and on the consequences of non-compliance, is not a process issue but a substantive merits issue and is an entirely conventional planning disagreement. None of the policies is expressed in absolute terms and all call for the application of planning judgment in determining whether they are satisfied or not. There is nothing unreasonable in the Council having a different view to the Appellant on these matters. The Council's views on the LDP have been clearly endorsed by the Planning and Development Committee at its meeting on 10 February 2022 and have been supported by the professional evidence of Mr Williams, a qualified town planner.

7. The cross-examination of Mr Williams did not show that Mr Williams had changed his professional views from those set out in his proof. The Inspector will have her own notes of the evidence, and the Appellant's notes are not agreed, but they do not show any unequivocal acceptance that this was a case either where all relevant LDP policies were complied with or a case where compliance with an admitted dominant policy override conflict with other policies. The cross-examination did not engage with such matters of proper analysis. The evidence Mr Williams gave in re-examination shows quite clearly that he was not changing his position on the non-compliance with the LDP or on the individual policies where conflicts arose.

REASONABLE PLANNING GROUNDS

8. The Council had available to it at the stage of each of the determinations, the evidence from local residents and community representatives (such as the Town Council, Members of the Senedd, and ward councillors) which they were perfectly entitled to take into account and balance against the advice of their professional officers and various statutory consultees. The transcripts of the meetings show that they carefully considered both the officer advice and the other views that they heard before coming to their decisions.

9. The evidence from local residents was clearly rooted in empirical evidence of the existing operation and was undoubtedly a material planning consideration (for the reasons set out more fully in the Closing Submissions). The Council was perfectly entitled as a matter of planning judgment to give that evidence more weight than the evidence put forward by the Appellant or the advice given by their officers. The acceptance of the Environmental Statement as adequate to meet the requirements of the EIA regime says nothing about the planning judgments that the Council is then able to form. The EIA process informs decision making but is not a substitute for it.

10. The Council therefore had reasonable planning grounds for rejecting both Appeals and was perfectly entitled to do so.

RELEVANT EVIDENCE IN SUPPORT

11. The Council has provided relevant evidence via Mr Williams to support its decisions to refuse both proposals. As noted above, Mr Williams is a qualified town planner, and has set out his professional assessment of both Appeal A and Appeal B having regard to the legislative and policy context. The fact that he has not disputed the technical evidence relied on by the Appellant misses the point. What he has done (as he explained at paras 4.20 to 4.28 of his evidence (LPA3.1) is to set that evidence against the empirical evidence from local residents and to reach a planning judgment in the light of that. This is a wholly conventional planning exercise and whether the ultimate decision maker shares Mr Williams' conclusions or not is, in a costs context, neither here nor there.

12. The Appellant seeks to make much of what is said to be the Council's changing case. Whilst it is correct that the case presented to the Inquiry is broader than simply the identified issues in the Reasons for Refusal, that is not in the least surprising. Having sought the advice of an external planning consultant in the light of the appeals, it would have been quite remiss for the Council to then present a case that did not reflect that advice. The Council did, however, ensure that the elected Members were able to consider the issues raised by the consultant, including the policy matters, in order to give them oversight of the case being advanced on their behalf.

13. It was entirely proper for the Council to raise issues about the adequacy of some of the technical evidence on noise and dust, having sought its own independent advice, and then, once further evidence had been provided, to accept that those technical issues had been adequately addressed. In any event, those topics relate to matters outside of the scope of the costs application (which does not seek costs in relation to either acoustic evidence or dust evidence) so the criticisms go nowhere.

14. This is not a case where the Council's concerns could be addressed or overcome by conditions. A 200 m condition on Appeal A would not have

resolved the amenity impacts of concern for the reasons set out more fully in the Closing Submissions.

15. The Council's case as advanced to the Inquiry (and as set out in the Closing Submissions) does not represent *"chaos"* or anything other than a conventional planning assessment, based on consideration of the policies of the LDP and other material considerations.

16. For the avoidance of doubt the Council rejects what is said to be the characterisation of its case in the Appellant's Costs Submissions and it rejects the tendentious claims in paras 9 and 10 of those Submissions on what are clearly not matters of fact but involve a wide range of planning judgment matters. Those issues are rehearsed more fully in the Closing Submissions.

UNNECESSARY EXPENSE

17. The Council reiterates that its decisions were not unreasonable but in any event there has been no unnecessary expense. The appeals were inevitable given the difference of view between the Council and the Appellant about the acceptability of the impacts of the development.

18. Moreover, the Council has not raised any highways matters or required any highways evidence to be called. Irrespective of any other matters there can be no basis for a costs claim to include any highways evidence.

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