HATFIELD QUARRY INQUIRY

HCC RESPONSE TO APPELLANT'S COSTS APPLICATION

The Big Picture Answer to the Claim

1. Brett's application is made on the basis that the refusal was unreasonable even though:
    a. nobody now talks in support of the scheme as refused;
    b. the core of the 2021 Plans are sought to be substituted into the 2016 Appeal to attempt to address its most obvious flaws;
    c. wide ranging conditions which were not on offer at the application stage and which are a substantial departure from what was promoted at application stage are now finally agreed by Brett going beyond even the 2021 Scheme;
    d. pumping, which was promoted as a necessary part of the operations and which was being actively promoted right up to the SoC, has now been entirely dropped; and
    e. wide ranging conditions on the GWMP proposed by the Council are now agreed – but even a week into the inquiry they were the subject of major (unfounded) criticism in "the Appellant's Note on Groundwater Conditions" - the Council had to stick to its guns in the context of this inquiry with all the experts round the table (in several meetings on those conditions) to secure that which is now agreed.

2. Brett's claim rests on the unstated assertion that what is now "on offer" from Brett in the conditions and the substituted plans could have been achieved by discussion prior to the refusal – members could have put off the decision to allow resolution of those matters. That is a *necessary but misconceived* element of the costs claim:
    a. it is for the Appellant to justify its scheme and its proposals at application stage and to make such adjustments as are judged necessary to meet the concerns raised. On the most obvious point – pumping – there was no adjustment at any time and the pumping was promoted as an integral part of the scheme;
    b. the idea that if Councillors had asked for no pumping, the GWMP conditions as now agreed, the omission of the CBP, the reduction in area of the processing area and so on, Brett would have agreed is obviously wrong. The history (as set out in detail in the Closing) shows that Brett have been extremely reluctant to make even the most obvious of adjustments even in the context of this inquiry;
    c. on pumping and GWMP conditions the Councillors had to refuse to force a complete rethink on the part of Brett and to achieve what even the Appellant now describes as a "fundamental" part of their scheme. On the CBP if it was

not required why was it still being promoted in the SoC and General SoCG? It was only dropped in the final run up to the inquiry – hardly suggestive that Brett would have given it up at application stage if asked (Costs [26]). The suggestion that it was unreasonable not to sever the CBP is surprising in that context and, in any event, wrong. There is no onus on councillors to unilaterally seek to remodel an application to make it acceptable.

3. The proof of the reasonableness of the Council's refusal is the package of changes which have been secured since. Indeed Brett recognised the significance of those changes by asking (at CMH) that the appeal be postponed pending determination of the 2021 Application) – Brett knew that its rethink went to the heart of the acceptability of the scheme.

4. And, of course, there is no evidence before this inquiry in support of key elements of the 2016 scheme that was refused – councillors were not just reasonable to refuse it but correct.

Substantive Award

5. Reliance on the 2017 resolution is misleading. The resolution included necessary changes to the 2000 s.106 which were never secured. In any event, everyone now agrees that there should be no pumping and a much more rigorous suite of GWMP conditions than suggested by the EA in 2016.

6. It is correct that RfR4 can now be addressed by conditions ***but*** that is only because there is a "fundamental" new element in the scheme – no pumping. With the pumping as being promoted as recently as the SoC, there would have to have been a refusal. Costs [20] is incorrect – Ms Lightfoot was *wholly* ***dis****attisfied* with the information and proposals on the 2016 application and it was only because of new information and major changes to the proposals that she was "content". If the Councillors had granted there would be a permission with pumping and no triggers in the GWMP (the converse of the position now agreed to be necessary)!

7. As to Mr Tunnell, the inspector is asked to review his notes of the XX. It is quite clear that the conditions to which he referred required (and are now agreed to require) major changes and much more information to limit the impact on the openness of the GB – the processing area scale, the scale and location of the bunds, the location and screening of the haul roads; the plans to maintain as much openness as possible from within the site during the works.

8. It is correct that members disagreed with officers. They were right to do so – the scheme for which permission is now sought on this appeal is very different in its essential elements from that which they were asked to consider.

9. The argument at [22a – c] are the Council's argument. It is not "disingenuous" or seeking to "defend the indefensible". The "fundamental" omission of pumping is just the most obvious example of the wholesale changes forced on Brett by the refusal.

Miscellaneous Points

10. RfR2 and 3 were not pursued in HCC's SoC which set out the case it would be presenting. The need to address those matters was recognised by the Appellant (at CMH) to be to meet third party points.

11. The alleged "aggravations" are not understood – Brett has been forced through this process to agree conditions which (even a week into the inquiry and its costs claim) it was robustly against. The truth is that the rigour of the appeal process has led to the patent flaws in the pumping proposals and the GWMP being exposed and everyone now accepting a very different regime from that previously put forward as adequate.

12. Para 32 is now withdrawn – but the fact it was ever included is testament to the exaggerated claims of Brett. On examination of the s.106 by counsel, legal flaws in it were identified. HCC obviously could not sign a s.106 which was legally flawed. These flaws were pointed out and corrected. If they had not been corrected, there would be no agreement and the Appellant would have had to come up with another way of securing that which it agrees is required.

Conclusion

13. This Costs Application is based on fundamental misunderstandings by the Appellant of its own proposals/changes and of the history of its approach here. Adopting the logic of *Leigh Lane* quoted by the Appellant, it is frivolous and a waste of resources to make a costs application which fails to engage with the basic facts. The Costs Claim should be refused.

David Forsdick QC

Landmark Chambers

5th December 2021