

HATFIELD QUARRY INQUIRY

COMMENTS ON APPELLANT'S RESPONSE TO HCC COSTS APPLICATION

1. The flowery language of Brett does not hide the fact that there is no answer to the substance of the points being made. HCC's Costs Application is not "ingenious" but routed in the statutory scheme. If a person is confident in being able to provide evidence to sustain its proposals it can, of course, appropriately appeal – but that is not this case.
2. There are two fundamental elements here:
 - a. the multitude of changes in the proposal from that before the Councillors. Those changes have been embodied (to a significant extent) in the 2021 Application under the free second go provisions. That is the correct route for applicants in the position of Brett here who need to change their scheme to make it acceptable (as it itself recognised by seeking the postponement pending determination of the 2021 Application); and
 - b. Brett ploughing on with the 2016 Appeal - when all its witnesses only talk to the merits of the 2021 Application (as effectively sought to be substituted).
3. What Brett has sought to do through this process is to bypass the decision of Councillors on the 2021 Proposal even though, here, Brett seeks a decision effectively on the 2021 Proposals. That is the real Chutzpah here. And tellingly there is no answer to the basic point in Brett's response to the Costs Application. On what possible basis can it be reasonable to pursue an appeal substituting plans as it went (only clarifying the substitution right at the end), trying to rewrite the description of development, finally conceding conditions right at the end of the process which go to the design of the scheme rather than to get its act together and pursue a fit for purpose new application (as it has sought to do).
4. It is unreasonable to put the Council to the costs of an inquiry effectively into the 2021 Application before: (1) consultation on that application had even closed; and (2) when the statutory processes for determining it are ongoing. The idea that HCC has to show [5] that permission would be granted on the 2021 Application to make good its application is misplaced. We do not know whether there will be a grant – what we do know is that: (1) if there is, this appeal will have been wholly unnecessary and a waste of everyone's time and money; and (2) if there is not, there may then be an appeal into the 2021 Scheme – but Brett's approach has put the cart before the horse – assuming a refusal when there is not one and before the statutory processes have run their course.

5. It is regrettable that Brett is “shocked, surprised or annoyed” by the Council pointing out the obvious. That has unfortunately been its reaction throughout this appeal process - most clearly demonstrated by the bold (and wrong) submissions on the GWMP conditions which were then conceded.
6. The Council should have its full costs of the appeal because the appeal simply should not have been brought.

David Forsdick QC

5th December 2021