

**APPEAL BY CP LOGISTICS UK READING PROPCO
LTD**

APP/W0340/W/25/3360702

**LAND BOUNDED BY HOAD WAY AND M4 AND
HIGH STREET, THEALE, WEST BERKSHIRE**

**LOCAL PLANNING AUTHORITY'S
APPLICATION FOR COSTS**

Introduction

1. This is the Local Planning Authority's ("the Council's") application for costs against the Appellant arising from the Appellant's unreasonable conduct in the appeal.

Background

First reason for refusal

2. By a decision notice dated 28 August 2024, the Council refused the Appellant's application for planning permission [CD6.1]. The first reason for refusal stated (insofar as material):

"The supply of employment sites across the district for the next 10 years will be successfully managed through the Local Plan Review with a commitment from the Council to revisit this to ensure adequate longer term delivery up to 2041. As such the short term needs for commercial space are adequately met and there is no immediate need for sites."

Appellant's statement of case

3. The Appellant appealed. Its statement of case included, as Appendix 1, an *Industrial & Logistics ('I&L') Needs Assessment* [CD3.2]. As the name of that document indicated, and as further explained under the heading "Purpose", the purpose of this assessment was to "provide an evidence-based and objective overview of the need for new industrial and logistics ('I&L') development ... within the Thames Valley Berkshire Local Enterprise Partnership ('LEP') and in West Berkshire specifically where the Subject Site is located" (*emphasis added*) (para 1.1.1). That document then set out at length and in detail a case for calculating the Council's need for industrial land significantly higher than the requirement calculated by its Local Plan Review.

4. The document gave only very limited consideration to the Council's supply of industrial land in Appendix B. It identified three categories of site: land with planning permission, allocated sites and proposed allocations (para 8.1.3). In Table 8.1, the document identified four sites with planning permission with no adverse comment as to their deliverability (either during the next 10 years or over the whole plan period).¹ Similarly, in Table 8.2, the document identified three allocated sites (under the now-superseded Core Strategy) again with no adverse comment as to their deliverability. Finally in Table 8.3, the document identified the six allocated sites under the (then) emerging Local Plan Review, with the only comments relating to five of the six being existing allocations carried over from the Core Strategy, with no comments as to their deliverability.

Mark Powney's written evidence

5. It was not until 15 May 2025, during discussions about the content of the Employment Land statement of common ground, five days before the deadline for proofs of evidence, that the Appellant expressly stated its position that:

*"The Appellant considers there are qualitative and pace of delivery issues with a number of the available supply sites which will be outlined in Proofs of Evidence"*²

6. Mr Powney provided a proof of evidence [CD5.6] on behalf of the Appellant in accordance with the timetable set by the Inspector at the case management conference. This document was similarly described as an "*Industrial & Logistics ('I&L') Needs Assessment*" and, again, was almost entirely focussed on the extent of the Council's need for employment land, repeating and providing justification for the alternative methodology advanced in that document.
7. As had been alluded to prior to the deadline, this proof of evidence raised, for the first time, potential "*qualitative issues*" with some sites within the Council's supply "*that will mean a number of the sites are longer term propositions.*" The fact that this represented an evolution in the Appellant's case is clearly indicated by para 5.1.4 in which Mr Powney acknowledged "*Since my supply assessment, detailed in [CD3.2], I have continued to review the supply in detail.*" Mr Powney also accepted this point in cross examination, acknowledging that issues with the speed of deliver of sites was not articulated in the Appellant's statement of case.

¹ Substantially fewer sites than those included in the Council's published evidence base for the LPR [CD2.27]. The document said nothing about the underlying rationale for selecting these four sites and excluding the remainder of the pipeline, other than their size.

² Copy enclosed.

8. In his proof of evidence, Mr Powney raised just three challenges to the Council's supply, albeit one of those (to the allocated site ESA3) was not a true challenge because, as he confirmed in para 5.1.8, he did not seek to "*remov[e] it from the near term supply given it is only a small site*". For the first time, Mr Powney sought to challenge the speed at which the allocated site ESA6 would come forward, based on issues raised in a flood risk sequential risk assessment (paras 5.1.6-5.1.7) which had only been noted as a "*new proposed allocation*" in the appendix to the statement of case. Similarly, for the first time Mr Powney also sought to challenge the deliverability of remaining land at Greenham Business Park (para 5.1.9-5.1.12), having only noted in passing in the appendix to the statement of case that an assumed development density of 40% was likely an "*overestimation*" given other permitted non-industrial uses could be developed at higher densities (para 8.6.3). No other sites were commented on in Mr Powney's proof of evidence.
9. The Council sought to challenge the Appellant's reliance on this evidence as introducing new lines of argument not raised in its statement of case. The Inspector permitted the Appellant to rely on this evidence but, unusually, directed that the Council should be given an opportunity to provide a separate rebuttal proof of evidence dealing specifically with paragraphs 5.1.2-5.1.13 of Mr Powney's proof of evidence.
10. The Council did so and Mr Pestell produced a supply rebuttal proof of evidence responding to each of these three discrete points about the Council's supply [CD5.17].
11. However, Mr Powney also provided a rebuttal proof of evidence [CD5.15] in which he further advanced the Appellant's case on supply, beyond that indicated even in his main proof of evidence. This document included a new Table 1 which (according to para 1.9.9) provided "*a high level review of the five allocations, building upon the analysis provided as part of my 2025 I&L Needs Assessment [CD3.2] and Proof of Evidence [CD5.6]*" (*emphasis added*). This table included commentary on sites not previously subject to adverse comment (ESA4 and ESA5) as well as additional commentary going beyond that previously articulated (e.g. restrictions on B8 uses at ESA3 and ESA5, flood risk and highway access limitations). At para 1.9.18, Mr Powney also sought for the first time to challenge the deliverability of six specific sites with planning permission.
12. Again the Council objected to the further development of the Appellant's case beyond that articulated in its statement of case and main proof of evidence. The Inspector again permitted the Appellant to introduce this evidence but, in apparent recognition of its late provision, unusually directed that Mr Pestell should produce a second rebuttal proof of evidence on the

issue of supply. This was done in due course to assist the inquiry. Mr Pestell was not asked any questions on his supply note in cross-examination.

Grounds for awarding costs against a party to an appeal

13. A costs order may be made against a party to an appeal where:

- (a) that party has behaved unreasonably; and
- (b) this has directly caused another party to incur unnecessary or wasted expense in the appeal process.³

14. “Unreasonable behaviour” in this context may be either:

- (a) procedural – relating to the process; or
- (b) substantive – relating to the issues arising from the merits of the appeal.

Unreasonable conduct

15. The Council submits that the Appellant has behaved procedurally unreasonably in seeking to advance a case on supply going well beyond that indicated in its statement of case. The PINS procedural guidance on appeals (para 12.1.1) explains the function of a statement of case as follows:

“A full statement of case contains all the details and arguments (as well as supporting documents and evidence) which a person will put forward to make their case in the appeal. In general, appeals are determined on the same basis as the original application. Therefore, the appellant’s submissions, including the statement of case, should not normally include new evidence or additional technical data not previously seen by the LPA and interested parties at the application stage”

16. More specifically the guidance explains that appellants should, in their statement of case, “*fully support their opinion that the development should be granted planning permission*” (para 12.2.1) and should, among other things, “*respond to the reasons for refusal set out in the LPA’s decision notice focusing on areas of difference” (emphasis added)* (para 12.2.3). This in turn informs the content of the local planning authority’s statement of case which must “*respond to*

³ NPPG para 16-030-20140306.

the appellant's full statement of case, addressing each of the reasons for refusal set out in the decision notice (where a decision has been made) which are being pursued, focusing on areas of difference" (emphasis added) (para 12.3.2).

17. In light of the background set above, the Council submits it is clear that the Appellant has pursued a case on supply going well beyond that signalled in its statement of case. Although the existence of a minimum 10-year supply of industrial land was expressly raised in the Council's reason for refusal, the Appellant did not indicate any intention to challenge that position in its statement of case – instead contenting that the extent of the Council's need for industrial land had been considerably understated by the LPR.
18. The Appellant continued to develop its case on supply through Mr Powney's proof and rebuttal proof of evidence, making a positive case for the first time that the Council could not demonstrate a 10-year supply of industrial land. Again this is not permitted under the PINS procedural guidance which explains that proofs of evidence should "*not include new areas of evidence, other than additional technical reports that were agreed at the CMC*" (para 11.12.4).
19. The Council recognises that the Inspector ultimately allowed the Appellant to present this case to the inquiry. However, it does not follow from the Inspector's decision that the new evidence was relevant to his decision that the Appellant behaved reasonably in presenting it to the inquiry in the piecemeal way that it has done through the various stages of this appeal.

Unnecessary or wasted expense

20. As a result of the Appellant's unreasonable conduct, the Council has had to incur the cost of preparing two additional supply rebuttal proofs of evidence by Mr Pestell and the time spent by him preparing to respond to the Appellant's case on supply. This would not have been necessary had the Appellant expressly stated its intention to challenge the Council's supply position in its statement of case.

Conclusion

21. For these reasons, the Council submits that the Appellant has acted procedurally unreasonably in this appeal as a result of which the Council has incurred unnecessary expense.

Matt Lewin
Cornerstone Barristers
24 June 2025