LAND EAST OF ANSTY

Appellant's Final Costs Reply

Introduction

1. This is the Appellant's reply to the Council's "Response to the Appellants' Application for Costs" dated 26 June 2026 ("the Response"). It adopts the abbreviations used in the Appellant's Costs Application and in the Response.

2. The Response does not answer the application. Stripped of its (many) bare assertions, it depends on two propositions, neither of which the Council can make good:

   (i) That members correctly applied §11(d)(i) NPPF; and

   (ii) That, had members gone on to consider §11(d)(ii), they would have refused in any event.

3. The first is contradicted by the material before the inspector; the second is unfounded speculation about a balancing exercise that members never carried out.

(a) Members did not consider §11(d)(ii) — and it is impermissible to speculate about what they would have decided

4. It is not in dispute that members refused permission under §11(d)(i), on the basis that harm to the National Landscape ("**NL**") provided a strong reason for refusal such that the tilted balance was "not engaged", and that they did not go on to consider §11(d)(ii): see the Council's own summary at Response §6(b).

5. Notwithstanding that, the Council's Response repeatedly invites the Secretary of State to assume how members would have decided a §11(d)(ii) balance they never undertook. It

asserts variously that the §11(d)(i) conclusion "*would not have been altered*" by considering the harms cumulatively (§6(b)); that it is "*self-evident*" and "*obvious*" that members "*would have concluded that the harms clearly and demonstrably outweighed the benefits*" (§§6(b), 14); and that this appeal "*would have been inevitable in any event*" (§16).

6. That is speculation, and it is impermissible in a barrister's costs response (devoid, as it is, of any evidence). The facts are clear: members did not perform the §11(d)(ii) exercise. They should have. But they did not. There is no reasoning from members to interpret, and no evidence of how they would have weighed the fuller basket of harms against the benefits under the higher "*significantly and demonstrably*" threshold. The Council's barrister's blithe predictions are not findings; they are advocacy about a counterfactual. We cannot possibly know what members would have concluded, and neither can the Council's barrister. There is no evidence.

7. The difficulty is compounded by the fact that, at the time of the decision, there was no prematurity objection, and none of the other matters (coalescence, heritage, trees) was said to engage §11(d)(i). The considerations before members under §11(d)(i) were therefore not the same as those that would have fallen for assessment under §11(d)(ii). It is simply not possible to know what members would have decided had they applied the correct test.

8. The Council's "self-evident" logic (§6(b) of its response) is in any event circular. It assumes that members lawfully balanced NL harm against the benefits and found the former to outweigh the latter, and then reasons that the same conclusion must follow under §11(d)(ii). But the premise is precisely what is in dispute: members conducted no such reasoned balance (see Section (c) below). An inference built upon a balance that was never carried out has no foundation.

(b) The Statement of Case did not correct members' error

9. The Council relies heavily on §9.10 of its Statement of Case as demonstrating a "correct and lawful approach" to §11(d)(i): Response §§6(c), 8 and 13(a). It does not.

10. Paragraph 9.10 asserts a conclusion — that the benefits "*are outweighed by the impact on the setting of the HWNL in isolation, and/or that impact taken together with the resulting landscape impacts and coalescence*". It does not carry out the evaluative exercise that *Monkhill* requires under §11(d)(i): it does not identify the nature and extent of harm to the NL and weigh that harm against the benefits so as to establish, with reasons, a strong reason for refusal. It simply contends for an outcome.

11. The "and/or" formulation is telling. Paragraph 9.10 runs the §11(d)(i) case (NL harm in isolation) and the §11(d)(ii) case (all harms cumulatively) together in a single sentence. That is the opposite of the disciplined §11(d)(i) analysis that *Monkhill* demands. It does not establish a strong reason for refusal on the basis of NL harm alone, by reference to any evaluated extent of that harm.

12. In any event, a Statement of Case is not evidence, and it could not supply the evaluative planning judgment that members did not carry out and that the Council's own witness carried out unlawfully. The Statement of Case therefore did not "*correct*" members' error; at most, it repeated the same unreasoned conclusion in different words.

(c) The Opening Statement is advocacy, not evidence

13. The Council relies on §§25-26 of its Opening Statement as showing that it "*correctly understood*" §11(d)(i) and "*also relied on*" §11(d)(ii): see its Response §§6(d)-(e), 7 and 8. Again, an opening statement is advocacy. It is not evidence, and it was not tested at the inquiry by

the Appellant (because it was not part of the Council's evidence to test). The Appellant made exactly this point in closing about the Council's attempt to reconstruct the §11(d)(i) balance through submission at §42 of its Closing, and it applies with equal force to the Council's reliance on its Opening now.

14. Two consequences follow:

(i) First, the Council is wrong to suggest that members relied on §11(d)(ii). They did not. The resolution and Decision Notice show that members applied §11(d)(i) and treated the tilted balance as not engaged; §11(d)(ii) was not addressed, as the Council itself accepts (Response §6(b): "it was not necessary for them to go on and consider para 11(d)(ii)"). Nothing said by counsel in opening can retrospectively place §11(d)(ii) into members' minds at the time of the decision.

(ii) Second, the Council is wrong to suggest that it approached §11(d)(i) correctly. Members gave no rationale for treating NL harm as a strong reason to refuse: the resolution and Decision Notice contain no evaluative balancing at all. And the only evidenced approach to §11(d)(i) at the inquiry - that of the Council's planning witness, Ms Jarvis - was accepted by all three advocates to be wrong in law and contrary to *Monkhill* (a matter of common ground: see the Appellant's Closing §3(x) and §140(iv)). Indeed, the Council itself accepts that no reliance can be placed on Ms Jarvis's evidence on this issue (Response §11(b); Council's Closing §42(e)).

(d) The assertion that "Ms Jarvis's evidence differed from the Council's own basis" is bare assertion

15. The Council's Response repeatedly asserts that Ms Jarvis's flawed approach "*was not the basis on which the Council itself had approached the issue*" (§§11(b)(i), 13(a)). That is mere assertion.

16. The Council's "*own*" approach is said to reside in the Decision Notice, the Statement of Case and the Opening Statement. But the Decision Notice contains no reasoning; and the Statement of Case and Opening Statement are a pleading and advocacy respectively, not evidence (see above). There is literally no other evidence from the Council as to how it says the §11(d)(i) strong-reason balance was in fact struck. The only witness who addressed §11(d)(i) did so unlawfully, on the Council's own admission.

17. The Council cannot have it both ways. It disowns its only §11(d)(i) evidence as unreliable, while asserting - without any evidence - that its "*own*" approach was nonetheless correct. A bare assertion that the two differ cannot discharge the Council of responsibility for the unreasonable conduct. By contrast, the officers did carry out the §11(d)(ii) balance and did not find a strong reason for refusal. The Council's difficulty is of members' own making.

(e) The assertion that members would have refused under §11(d)(ii) is unfounded speculation

18. The Response's "*no unnecessary costs*" case rests on the twin propositions that members did not misunderstand §11(d)(i), and that they would in any event have refused under §11(d)(ii) / s.38(6): §§13-16. The first is answered above. The second is unfounded speculation, for the reasons in Section (a) above.

19. The references in the Decision Notice to non-fn7 harms (rural character, trees, coalescence) show that those matters were in members' minds for the purposes of the development-plan conflict and s.38(6). They do not show — and cannot show — that members carried out, or would have carried out, the §11(d)(ii) "*significantly and demonstrably*" balance and come down against the scheme. The Council's leap from "these harms were noted" to "§11(d)(ii) would inevitably have been decided against the appeal" is precisely the unevidenced speculation to which the Appellant objects.

20. The s.38(6) argument (§13(c)) does not assist the Council. The reason this appeal was necessary is that members treated alleged NL harm as precluding the tilted balance under §11(d)(i). Had they instead applied §11(d)(ii), as the officers did, the outcome is unknown. The whole premise of the refusal was that the presumption in favour of sustainable development was disengaged.

21. Nor does the Council's point at §15 assist it. The Appellant does not allege unreasonableness in relation to §11(d)(ii) or the overall balance for the simple reason that the Council actually called evidence on, and engaged with, those questions — which is exactly what it failed to do on §11(d)(i). That distinction supports the costs application; it does not undermine it.

(f) The extenuating-circumstances point does not answer the application

22. The Council prays in aid the change from Mr Dale to Ms Jarvis at short notice as extenuating circumstances under PPG §16-031: Response §11(c). That does not answer the application. The unreasonable conduct is not confined to the late preparation of one witness's evidence. The erroneous approach to §11(d)(i) originated with members at committee — long before any question of substitution arose — and was then maintained in the Statement of Case and in the way the Council put its case. It is a substantive error of approach, not a by-product

of time pressure. At most, the extenuating circumstances might explain the timing or quality of Ms Jarvis's proof; they cannot excuse the Council's maintenance of an unlawful §11(d)(i) approach from the refusal onwards, nor its attempt to reconstruct the balance by submission at closing.

Conclusion

23. For these reasons, and those in the Costs Application, the Response does not answer the application:

    (i) members did not consider §11(d)(ii), and it is impermissible to speculate about how they would have struck a balance they never performed;

    (ii) neither the Statement of Case nor the Opening Statement corrected members' error: the former is an unreasoned pleading, the latter is untested advocacy;

    (iii) the Council did not approach §11(d)(i) correctly - members gave no rationale, and the only evidenced approach at the inquiry was accepted to be wrong in law; and

    (iv) the repeated assertion that members would have refused under §11(d)(ii) is unfounded speculation.

24. The points on wasted expense at in the Appellant's original application stand. The Appellant maintains its application for a full substantive award of its costs; alternatively, for the reasons in the original application, a partial award to cover the wasted costs of addressing the Council's case on NL impacts and the allegedly "strong" reason to refuse permission.

ZACK SIMONS KC

ANJOLI FOSTER

Landmark Chambers

180 Fleet Street

London   EC4A 2HG

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