

COSTS REBUTTAL SUBMISSION

APPEAL SITE:	LAND TO THE SOUTH OF WOODVILLE ROAD, OVERSEAL, SWADLINCOTE, SOUTH DERBYSHIRE. DE12 6LX
PROPOSED DEVELOPMENT:	CHANGE OF USE OF LAND TO FORM A 3 PITCH FAMILY GYPSY AND TRAVELLER SITE WITH 3No DAY ROOMS AND ACCESS OFF WOODVILLE ROAD - RETROSPECTIVE
APPELLANTS:	MR S ROGERS, MR M CONNORS AND MR J CONNORS
PLANNING AGENT:	MR MIKE CARR MSc MRTPI – MAT DESIGN LIMITED

THE APPELLANTS COSTS REBUTTAL

This submission is made following the LPA submissions regarding a partial award of costs to be made against the appellants in relation to (LPA Paragraph 1) unreasonable behaviour in relation to the withdrawal of the day rooms from the application on the basis that the appellants position at the time that this was not needed, and then to reverse this position as part of the appeal and to also build a substandard dayroom in clear breach of the Stop Notice in force on the site.

That is the sole basis (as we read it) for the submission, although the same costs submission strays into areas that have no relationship with the claim by the LPA that the withdrawal of the day rooms from the application on the basis that the appellants position at the time that this was not needed, and then to reverse this position as part of the appeal and to also build a substandard dayroom in clear breach of the Stop Notice in force on the site.

Our submissions will therefore focus on the actual LPA's actual costs submissions and not any other matters that seek to criticise the appellants submission of plans and information during the window that the planning application was considered, and prior to the refusal of planning permission.

For clarity, section 11, page 17 of the appellants Ground of Appeal Statement sets out the following:

- We sought to deal with this matter with the LPA and the CMRA, suggesting that the small-scale nature of the buildings/foundations could suitably be dealt with via planning condition. The LPA did not agree to such an approach. Therefore, and to remove this area of potential conflict, a decision was made by the appellant to remove the proposed day rooms from consideration as part of the planning application. The plans for the development were amended accordingly and are available to view of the web page for the planning application. Copies of the original plans and the amended plans are submitted as part of this appeal.
- The LPA had the amended plan information prior to the refusal of planning permission. Whilst the description was amended on the web page for the planning application to "the change of use of open grazing land to form a 3-pitch family gypsy and traveller site and the creation of a new access road", the Planning Committee report description remained unaltered.

- The amended plans that were provided to the LPA before the refusal of planning permission, which confirmed the removal of the day rooms from consideration. Part B of NPPG advice attached to Planning applications and, clearly identifies developments that are exempt from the Coal Mining Risk Assessments. At the Planning Committee meeting, members of the Planning Committee were advised that the day rooms had been removed from the proposed development, which effectively confirmed that the CMRA objection had been removed and that the development.

For the avoidance of any doubt, the amended plans are before the Planning Inspector, and we confirm that there are no day rooms proposed as part of this development. There and there are no submissions we are aware of, other than the completion of the appeal submissions (which require accurate descriptions of what was originally proposed), that would lead the LPA to make such a costs application and add further time and expense to the appeal process.

We can also confirm that the family's day to day needs would be taken care of by the static home and the caravan. The static home would provide sanitation and refrigeration, which is a common occurrence in static homes as the LPA should appreciate. Any other site facilities that are proposed after this appeal process, if it is allowed, would obviously and reasonably be dealt with by a fresh planning application, which would be subject of the usual consultation process and scrutiny.

In terms of what happened on site and following the submission of the appeals, the appellants erected a wooden shed on the land, which has now been removed. Within the context of the LPA submissions that this was needed for sanitation etc.... that is a correct assessment.

What the LPA do not say is that the families are living on the site in touring caravans and that the proposed static homes are not on site, forcing the families to utilise sanitation facilities in local supermarkets and public swimming baths.

In reality, and despite the LPA submissions that the appellants and their agent have sought to reintroduce the day rooms to the description of the proposed development as set out in the appeal documents, such a conclusion is not correct and fails to take account of how the appeal forms have to be completed at appeal stage.

APPEAL FORMS EXTRACT (APPEAL FORMS ATTACHED TO THIS RESPONSE)

Enter the description of development that you submitted in your application

CHANGE OF USE OF LAND TO FORM A 3
PITCH FAMILY GYPSY AND TRAVELLER
SITE WITH 3NO DAY ROOMS AND ACCESS
OFF
WOODVILLE ROAD - RETROSPECTIVE

LPA paragraph 4.11 sets out that the removal of the day rooms from the application and subsequent erection of a building on the site has led to additional work for Officers of the Council. It is understood now that some form of day room, or additional space and sanitation facilities is indeed required by the occupants of the site, and such a provision will require planning permission.

In additional, LPA paragraph 4.14 sets out that the Council has incurred extra time and expenses in investigating the unlawful erection of a building and defending this reason for refusal, which could have been addressed has the Appellants chosen to commission the required information during the consideration of the application, for which the council has demonstrated adequate notice was available to them.

We would re-iterate that there are no day rooms proposed as part of the development, and whilst we appreciate that a wooden shed was erected on the site in breach of the Stop Notice, and then investigated by the Council, this does not form any part of this appeal process.

The LPA have instigated prosecution proceeding against the appellants for the breach of the Stop Notice, which is in their gift and the correct vehicle to deal with this matter, rather than adding to the appeal process and unnecessary and wasted expense by both parties in dealing with the LPA costs submission and this rebuttal, which we consider was wholly unnecessary.

The LPA say that there has been resistance to, or lack of co-operation with the other party or parties in providing information, discussing the application or appeal, or in responding to a planning contravention notice. The Planning Inspector will see from the submissions made that the amended plans and all the supporting information was submitted before the refusal of planning permission. If there were delays in being able to fully assess those matters, surely the most reasonable approach would have been to defer the planning decision to a future date, so that the Decision Maker was definitively able to make a planning decision that represented what the amended plans for the appeal site made clear.

In conclusion, we cannot think of any reasonable reason why the LPA would seek to involve breaches of a Stop Notice, investigative enforcement work and prosecutable offences as part of any Section 78 cost's application.