



## Appeal Decision

Inquiry opened on 27 July 2006

Site visits made on 27 June 2006

by **B J Juniper** BSc, DipTP, MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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Date: 15 August 2006

**Appeal Ref: APP/C4615/A/06/2009567**

**Land adjacent to Parkinson House, Jews Lane, Gornal, Dudley, DY3 2AH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Richborough Estates against the decision of Dudley Metropolitan Borough Council.
- The application Ref P05/2393, dated 22 September 2005, was refused by notice dated 7 February 2006.
- The development proposed is residential development, access and associated works.

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

### Procedural Matters

1. The inquiry opened on 27 July 2006 and sat for two days. As well as an accompanied site visit held after the completion of the first day's sitting, I made an unaccompanied site visit at the appellants' request later that evening to experience the night time noise environment.
2. The application was made in outline with siting, design, external appearance and landscaping reserved for subsequent approval.
3. A unilateral undertaking prepared under S106 of the above Act and dated 20 July 2006 was submitted at the inquiry.
4. At the opening of the inquiry a letter from Dudley Safes Ltd dated 21 July 2006 was handed in, withdrawing the company's objection to the proposal.
5. At the inquiry an application for costs was made by Richborough Estates against Dudley Metropolitan Borough Council. This application is the subject of a separate Decision.

### Main Issues

6. I consider that the main issues are:
  - (a) Whether there are material considerations to warrant granting permission for residential development on land allocated for industrial development;
  - (b) the effect on the living conditions of residents of the proposed development and the operations of nearby industrial development, with particular regard to noise;
  - (c) highway safety.

## Planning Policy

7. The development plan includes the Dudley Unitary Development Plan (UDP) adopted in 2005. Policy EE3 precludes redevelopment of sites in employment use except in a number of specified circumstance including those where remediation costs make development for industrial purposes financially non viable. The Policy also provides for such redevelopment where it can be demonstrated that the site is no longer capable of providing an appropriate standard of accommodation for business use, where marketing has established that there is no demand for such a use on the site and where the development would not be likely to inhibit or prejudice the operations of any nearby occupier. Policy DD5 applies criteria for the control of development within industrial areas including requirements that proposals should safeguard the viability of adjacent industrial areas, and the amenity and environmental quality of adjacent residential areas. Development should make adequate and safe provision for access and egress by vehicles to accord with Policy DD6.
8. I have also had regard to Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1), and Planning Policy Guidance Notes 3 – *Housing* (PPG3), 4 - *Industrial and Commercial Development and Small Firms* (PPG4), 13 – *Transport* (PPG13) and 24 – *Planning and Noise* (PPG24).

## Reasons

### *Land Use Policy*

9. The site is in an area where mining operations once took place and was formerly in industrial use but has been vacant for some twenty years. The northern and western sides are bounded by steep slopes, some with trees, but the rest of the land has been cleared and graded. Nevertheless, considerable works would be required to make it suitable for any form of built development and the appellants estimated the costs of these works to be about £1.8m. They argued that land values for industrial or warehousing development in the area are lower than those for residential development to the extent that employment generating uses would not provide a sufficient return to justify remediation. The Council did not submit any evidence to counter this.
10. In both the current and superseded Unitary Development Plans the site has been allocated for employment use. The appellants have marketed the site for employment purposes for some time, without attracting any successful interest. Council officers had accepted in processing the application that this exercise had been appropriately undertaken and that it would be not be viable to redevelop the site for its allocated purpose. It was not disputed at the inquiry that this remained the case.
11. The Council is aiming to provide 98% of its new housing on brownfield sites. Whilst it is not at present achieving that target, no evidence was submitted to suggest that it would not do so in the future. Nevertheless, I am conscious of the advice in paragraph 42(a) of PPG3 that proposals for residential development on land allocated for industrial use and which is no longer needed for that purpose should be considered favourably. I do not consider that any of the caveats listed in paragraph 42(a) are relevant to the appeal proposal. I conclude that there are material considerations which would warrant granting permission in principle for residential development on the land, notwithstanding that it is allocated for industrial development in the development plan.

*Noise*

12. A characteristic of much of the urban area around the appeal site is the juxtaposition of residential and industrial uses and the appeal site is no exception. To the north, at the crest of a substantial embankment, is the Dormston Trading Estate. Two premises adjoin the site, one of them a yard operated by Environmental Contracts and the other is one of a number of buildings on the estate occupied by Robert Lickley Refractories Ltd (RLR). To the south west, on ground falling gently away from the appeal site, is the Sovereign Industrial Estate on which a variety of manufacturing and allied processes take place. These include the manufacture of safes, coating of engineering products and steel cutting and distribution.
13. A number of the processes produce noise, both with a steady tonal character, such as that from air extraction and filtration systems, and intermittent, such as produced by shot-blasting and metal cutting. There is also noise from vehicle movements, including fork-lift trucks and reversing alarms. Most of the companies are long-standing operations which are not subject to conditions limiting noise emission or hours of operation. Traffic noise, especially from Jews Lane, is a further source of potential disturbance.
14. The Council had received complaints from residents of the more recent residential development in the area, in particular about noise from the Sovereign Estate affecting dwellings in Richborough Drive. This had led to what it described as a complex investigation and the service of statutory notices on one of the industrial operators. The Council was concerned that further residential development in the area would result in additional complaints and that it would be placed under a statutory duty to secure remedial measures, which would either constrain industrial operations or require firms to incur additional costs. RLR expressed similar reservations in terms of their site.
15. Noise assessments prepared by the appellants were based on British Standard 4142:1997 - *Rating industrial noise affecting mixed residential and industrial areas* (BS4142). The Council and the appellants had agreed this approach which is advocated by paragraph 19 of Annex A to PPG24 (although based on the previous, 1990, edition of BS4142). Measurements of existing background noise and noise from the industrial operations indicated that for some localised areas of the site the difference would be likely to exceed the 5dB stated in BS4142 to be of marginal significance and would approach the 10dB at which complaints would be likely, exceeding it at one location.
16. The appellants had evolved a range of proposals to deal with noise from outside the site, essentially comprising bunds surmounted with acoustic fencing. For an area close to the southern boundary of the site, where the 5dB limit might be exceeded, acoustic modelling had established that further measures would be likely to be required in respect of specific dwellings. An illustrative site layout had been used in the modelling process and, following discussion with Council officers, the appellants had accepted during the processing of the application that some units might have to be arranged so that only non-habitable rooms faced the noise source. At the inquiry, however, they argued that other techniques could be employed, such as fixed glazing and mechanical ventilation systems, so that the design and layout of the dwellings would be less constrained.
17. The parties differed on the applicability of British Standard 8233:1999 - *Sound insulation and noise reduction for buildings - Code of practice* (BS8233). The appellants argued that Table 5 of that document established design ranges for reasonable conditions in bedrooms

and living rooms and that it was therefore acceptable to specify those levels and expect the designers to meet them. The Council pointed out that that BS8233 assumes that noise sources will be steady, citing road traffic, mechanical services and continuously running plant (paragraph 7.3) and I accept that this is so. However, although there were some percussive noises, much of the sound emanating from the industrial premises around the site is of a steady character. Further, the appellants had set a more rigorous standard, predicting night-time noise on a 5 minute scale instead of the 8 hour period and I agree that this approach makes appropriate allowance for more intermittent noise.

18. The appellants produced a number of appeal decisions where Inspectors had accepted studies based on a combination of BS4142, BS8233 and World Health Organisation guidance. Whilst I accept that some of these concerned reserved matters where the principle of development had been established, that does not seem to me to affect the validity of the methodology. Since the appellants' calculations had assumed a 'worst case' starting point I do not accept the Council's argument that an additional margin of error should have been allowed.
19. The appellants had used 'SiteNoise 2000', a computer modelling package which was designed to predict noise from construction sites. The Council considered that it was an inappropriate tool for the appeal proposal since it assumes point sources rather than area sources, such as vibration radiating from the roof of a building. It also allows for only one attenuation barrier and makes only simple allowance for reflected noise from building facades. However, no alternative methodology was advanced and I saw that most of the potentially intrusive noise sources were effectively from a single point, such as open factory doors and extraction plant. As the model was calibrated with 18 different sources during four site visits I regard the observations as reasonably representative. For the most part the appellants' proposals envisaged only a single noise barrier and in my judgement the model provides helpful guidance as to the likely noise climate within a built development on the appeal site.
20. The model also depends on observations of existing background noise and the Council was of the view that, within the proposed development, these would be lower than those observed on the present open site because of the screening effect of buildings. As a result calculations of the rating level made under BS4142 would show a higher difference between background noise and the external noise sources and would thus point to a higher incidence of complaints from residents. I acknowledge that any dwellings would have a screening effect but I am similarly conscious that the presence of occupied dwellings would in themselves result in some addition to background noise. I therefore ascribe only limited weight to this argument.
21. Whilst several of the nearby firms work late into the evenings, there was no indication that any of them normally operated all night and the Council noted that, as they were not subject to restrictions on hours of operation, night time working could commence at any time, potentially leading to complaints. However, the disturbance to the occupiers of the proposed dwellings would be mitigated by attenuation measures, whereas others nearby, especially in Richborough Drive, have less protection. It does not appear to me to be reasonable to constrain the development of the appeal site because of the possibility of additional noise arising in the future. Whilst acknowledging the potential constraint on nearby firms, if the establishment of new operations or the extension of hours of existing

processes resulted in additional noise the Council might well be justified in seeking to control that noise in any case.

22. The Council was opposed to noise attenuation measures that required windows to habitable rooms to be fixed shut or where it would be necessary to install forced ventilation, arguing that this would provide unsatisfactory living conditions. Instead it argued that the rooms of any dwelling likely to be unacceptably affected by external noise should be orientated away from the source. In my view, however, the installation of acoustically insulated windows together with mechanical ventilation in any affected dwellings could be satisfactorily controlled by a planning condition and would provide the occupiers with choice. This approach is supported in Annex 6 to PPG24.
23. Outline permission has recently been granted for residential development of the H F Shaw site, another nearby former industrial site to the east of the Dormston Trading Estate. The Council stated that it had experienced difficulties in negotiations on reserved matters concerning adequate noise insulation and argued that granting outline permission without fully specifying the appropriate measures would be likely to create subsequent difficulties. Annex 4 to PPG24 and Circular 11/95, however, suggest that appropriate conditions can be formulated and I do not accept that their enforcement would be unduly onerous. I conclude that the proposal would not adversely affect the living conditions of residents of the proposed development or the operations of nearby industrial development and would not be contrary to UDP Policies EE3 or DD5.

#### *Highway Safety*

24. Whilst the application was made in outline, the illustrative scheme prepared by the appellants envisaged 95 dwellings. The parties had agreed this as a basis for estimating traffic flows associated with the proposed housing.
25. The present vehicular access to the site is from Jews Lane along the edge of the car park of the adjacent Computeach site. This site, which has two principal buildings and is controlled by the appellants, has an additional access from Deepdale Lane via the access road to the Sovereign Industrial Estate. There appeared to have been a measure of uncertainty during the processing of the application as to the extent to which the appellants proposed to use this access and it is possible that the Council's decision was based on an incorrect assumption. Be that as it may, the appellants indicated at the inquiry that they were open to a variety of scenarios.
26. The access to Deepdale Lane is awkward. It slopes down from the car parks and service bays on the Computeach site and meets the Sovereign Industrial Estate access at an acute angle, estimated by the parties to be about 10°. Drivers here have to cross the line of the footpath/cycleway which runs along the south side of the appeal site towards Burton Road and exit into the traffic from the industrial estate. The access is used principally at present for servicing traffic.
27. The appellants propose to enlarge the access by taking in part of an adjoining parking area, removing much of the dense vegetation in the narrow angle between the accesses and installing surface markings and barriers to delineate the pedestrian and cycle route. Whilst this arrangement would permit smaller vehicles to manoeuvre so that drivers would have improved vision to the left, it would not meet modern standards for new accesses. Emerging from the junction would also require drivers to look for cyclists and pedestrians

on the public right of way as well as vehicles on the carriageway. Further, drivers of larger commercial vehicles would still have restricted visibility on exiting as a result of the angle at which the accesses meet and would need to drive on the 'wrong' side of the access for a short distance on entering the site.

28. With this in mind, I do not consider that the access would be suitable for a substantial increase in traffic. However, the appellants produced a drawing (Ref: R063031-A/004) showing the parking area in the Computeach site split so that 37 spaces derived access from Deepdale Lane and the remaining 84 from Jews Lane. As the appellants control this site a condition requiring such a split to be physically created and retained would be practicable and enforceable. I acknowledge that it would result in, as the Council noted, a relatively large percentage increase in the number of vehicle movements to Deepdale Lane but the absolute number would be small. Given that servicing traffic to the site would not be likely to alter markedly, I do not consider that this arrangement would result in material additional hazards to users of the Deepdale Lane access and the associated routes.
29. The junction between the principal access road to the Computeach site and Jews Lane, which would provide access to the residential development and the balance of the existing traffic to Computeach, is adequately dimensioned for manoeuvring. Visibility in either direction for emerging traffic is, however, restricted and the issue between the parties was whether adequate visibility would be available. The appellants control land to either side of the access and could provide visibility from a point 2.4m behind the carriageway edge (the 'x' distance) of 90m to the south and 79m to the north (the 'y' distances). With an 'x' distance of 4.5m visibility of 53m to the south and 71m to the north would be available.
30. The Council pointed out that the guidance on p58 of *Places Streets and Movement* (PSM) requires a 9m 'x' distance as 'the normal requirement .... for the improvement of existing junctions between access roads and district or local distributor roads' and allows for a 4.5m 'x' distance 'for less busy minor roads and busy private accesses'. A 2.4m 'x' distance is regarded as 'the minimum necessary for junctions within development'.
31. The appellants had carried out a vehicle speed survey which established that the 85<sup>th</sup> percentile spot speed for cars, the normally accepted measure, is 31mph for northbound vehicles and 33mph for those southbound. This equates to between 50 and 53kph and Table A on p58 of PSM advises a 70m 'y' distance in those circumstances. Thus the appellants can achieve this with a 2.4m 'x' distance but not at 4.5m.
32. PSM states that its guidance 'needs to be assessed in the circumstances of each case'. The peak number of turning movements generated by Computeach and the proposed housing would not coincide. DB 32 acknowledges that greater 'x' distances are intended to allow two or more vehicles to exit a junction in a stream. The appellants estimated that, by 2015, in the morning peak hour the number of vehicles exiting from the site would be 34 northbound and 15 southbound, joining respective flows of 386 and 493 vehicles on Jews Lane. Even with an increased flow from the Computeach site to minimise traffic on the Deepdale Lane access this does not appear to me to be a situation where significant queuing would occur. Further, the alignment of Jews Lane is such that in practical terms the visibility from the junction would exceed the calculated distances appreciably. I am also conscious that the only recorded traffic accident at the existing junction was a single vehicle accident that appeared not to be a result of the configuration of the junction. Overall,

therefore, I consider that the junction modified as shown on drawing No. P103111-A/001A would provide satisfactory visibility.

33. I conclude that the proposal would not be harmful to highway safety and would accord with UDP Policy DD6.

#### **Other Matters**

34. A S106 unilateral undertaking providing for a contribution towards the cost of open space and play areas, and for the provision of affordable housing on the site was submitted at the inquiry. In my view these facilities are properly required in connection with the proposal and that the undertaking otherwise meets the requirements of Circular 05/2005.

#### **Conditions**

35. I consider that conditions requiring investigation and remediation of contamination and the ingress of methane and carbon dioxide are necessary to ensure the safety of occupants of the proposed dwellings. Provision of improved accesses and adaptation to the Computeach car parks is required in the interests of highway safety. Protection of occupants from external noise sources requires conditions ensuring the provision and retention of acoustic barriers. I concur with the appellants' view that specifying dwellings or areas where habitable rooms should not face noise sources is unnecessary provided that defined maximum noise levels within dwellings, relating both to industrial and traffic noise, are imposed by conditions. I agree with the Council that a requirement to maintain any landscaping proposed until it has become established is necessary in the interests of the appearance of the proposal. I do not, however, consider it necessary to impose conditions to specify which plans are included or excluded as this is evident from the Formal Decision below.

#### **Conclusions**

36. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

#### **Formal Decision**

37. I allow the appeal, and grant outline planning permission for residential development, access and associated works on land adjacent to Parkinson House, Jews Lane, Gornal, Dudley in accordance with the terms of the application, Ref P05/2393, dated 22 September 2005, plan number RPS1 and revised plan numbered RPS2-17243p dated 16/02/06, subject to the following conditions:

- 1) Details of the siting, design, external appearance of the buildings, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall begin either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

- 4) Development shall not begin until a comprehensive written site investigation strategy (in a form to be agreed by the local planning authority), has been submitted to and approved by the local planning authority. Such a strategy shall facilitate the identification of contaminants and permit the risk based assessment of the development site. Where the investigations identify the presence of contamination, development shall not begin until a scheme to protect the development from the effects of such contamination has been submitted to and approved by the local planning authority. Such a scheme shall include provisions for validation, monitoring and sampling; be implemented in accordance with the approved details before the development is first occupied; and be retained throughout the lifetime of the development.
- 5) Development shall not begin until a comprehensive written site investigation strategy (in a form to be agreed by the local planning authority), has been submitted to and approved by the local planning authority. Such a strategy shall facilitate the identification of methane and carbon dioxide. Where the investigations identify the presence of methane and/or carbon dioxide the development shall not begin until a scheme to protect the development from the effects of such gases has been submitted to and approved by the local planning authority. Such a scheme shall include provisions for validation, monitoring and sampling; be implemented in accordance with the approved details before the development is first occupied; and be retained throughout the lifetime of the development.
- 6) Before any dwelling on the site is occupied a wall or close-boarded fence shall be provided along the boundary with the Dormston Trading Estate and along the boundary with the car park to Parkinson House (Computeach). The wall/fence shall be 3.0 m high and shall have a minimum density of 10 kg/m<sup>2</sup>. Such barrier shall be retained for the life of the development.
- 7) Details to be submitted in accordance with condition (1) shall include the provision of a noise barrier along the boundary with the Sovereign Works Industrial Estate in accordance with RPS drawing No. 33042.RevA. The design details of the barrier shall be submitted to and approved in writing by the Local Planning Authority and all works which form part of the barrier shall be completed before any of the dwellings are occupied. Such barrier shall be maintained for the life of the development.
- 8) Any dwelling shall be constructed so as to provide sound attenuation against industrial noise sources so that the resultant internal noise levels within bedrooms between the hours of 23:00 and 07:00 shall not exceed 30dB  $L_{Aeq, 5min}$ .
- 9) Any dwelling fronting Jews Lane shall be constructed so as to provide sound attenuation against road traffic noise so that the resultant internal noise levels within living rooms shall not exceed 40dB  $L_{Aeq, 16hr}$  between 07:00 and 23:00 and within bedrooms noise levels shall not exceed 35dB  $L_{Aeq, 8hr}$  between the hours of 23:00 and 07:00.
- 10) Before any dwelling is occupied, a revised access to the Computeach site from Deepdale Lane shall be constructed and its use restricted by the construction of physical barriers to the servicing area and the parking area immediately around Parkinson House as shown on drawing No. R063031-A/001A, dated 9 December 2005, or such other arrangement as may be approved in writing by the local planning authority.



- 11) Before any dwelling is occupied the access to Jews Lane shall be modified as shown on drawing No. P103111-A/001A. No obstruction to visibility more than 600mm above the level of the adjacent carriageway shall be placed at any time within the visibility splays shown hatched and shaded on that drawing.
- 12) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

*B J Juniper*

INSPECTOR

Richborough

**APPEARANCES**

**FOR THE LOCAL PLANNING AUTHORITY:**

Mr S Choongh of Counsel, instructed by Mrs Breakwell,  
the Solicitor to the Council

He called:

David A Tucker MSc, CEng, MICE, MIHT	Principal: David Tucker Associates
Lynda Fawthrop BSc(Hons), MCIEH	Senior Environmental Health Officer
Mr R A Davis BSc	Acoustic Consultant

**FOR THE APPELLANT:**

Mr C Young of Counsel, instructed by Andrew  
Hubbold of NAI Fuller Peiser

He called:

Paul Froggatt BA(Hons), MSc, CMILT, MIHT	Divisional Director: JMP Consulting Ltd
Mr D Humpheson BSc(Hons), MSc, MIOA	Technical Director: RPS
Andrew Hubbold	Partner: NAI Fuller Peiser

**INTERESTED PERSONS:**

Bruce Bridgen	Managing Director: Robert Lickley Refractories Ltd
Tom Genway BSc(Hons)	Consultant: Ancer Spa

**DOCUMENTS SUBMITTED AT THE INQUIRY**

Document	1	Council's letter of notification and list of addresses to which it was sent
Document	2	Letter from Dudley Safes Ltd dated 21 July 2006
Document	3	Letter from Robert Lickley Refractories Ltd dated 26 July 2006
Document	4	Statement of Common Ground dated 24 July 2006
Document	5	Letter from Arup Acoustics re site at Cradley Heath dated 12 Sept 2003
Document	6	Extract from Design Bulletin 32 Second Edition, April 1992
Document	7	Unilateral Undertaking dated 20 July 2006
Document	8	Extract from the Dudley Unitary Development Plan 2005
Document	9	Suggested text for conditions supplied by the appellants

**PLANS**

Plans	A1, A2	Application drawings
Plan	B	Drawing No. P103111-A/001A showing proposed access to Jews Lane



# Costs Decision

Inquiry held on 27 July 2006

Site visit made on 27 July 2006

by **B J Juniper** BSc, DipTP, MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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Date: 15 August 2006

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## Costs application in relation to Appeal Ref: APP/C4615/A/06/2009567

### Land adjacent to Parkinson House, Jews Lane, Gornal, Dudley, DY3 2AH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Richborough Estates for a full award of costs against Dudley Metropolitan Borough Council.
- The inquiry was in connection with an appeal against the refusal of an application for planning permission for residential development, access and associated works.

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### Summary of Decision: The application fails and no award of costs is made.

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#### The Submissions for Richborough Estates

1. The application is made with regard to paragraphs 9 and 11 of Circular 8/93. Paragraph 11 states that planning authorities must show that they have considered the possibility of imposing relevant conditions. There is a need for Councils to behave consistently, as paragraph 9 of Planning Policy Statement 1: *Delivering Sustainable Development* makes clear. On the neighbouring H F Shaw site the Council granted outline permission and sought subsequently to negotiate appropriate noise amelioration conditions. It has been completely inconsistent in not treating the appeal site in the same way.
2. The members' decision was the epitome of what paragraph 9 of Circular 8/93 states that they should not do. Whilst members are not bound to accept the advice of their officers, they must have reasonable grounds for not doing so. All that was produced was post-decision justification for a decision made by members without technical justification and highways and noise are two of the most technical aspects of planning. The Council did not produce a member or even a planning officer to show that they knew what they were doing and the decision they made was in itself wrong. It cannot be right for experts to be recruited after the decision was made to justify a decision made on an unknown basis,

#### The Response by Dudley Metropolitan Borough Council

3. The application is misconceived. The evidence demonstrated that the matter could not be dealt with by conditions since the appellants had to suggest a number of measures to try to show that a scheme could be devised which would not lead to complaints or prejudice nearby industrial users. The Council remained unconvinced that this could be done. Whilst consistency is desirable, it should not lead to consistently poor decisions.
  4. The Council's experience with the H F Shaw site was that leaving contentious matters to the reserved matters stage was problematic, and this had been reinforced by reference to other appeal decisions. The Council is rightly opposed to mechanical ventilation and whilst other
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parties may take a different view, it is entitled to take that position. Granting outline permission would mean that the argument would not be open to it.

5. It is inconsistent to argue that the decision hinged on technical matters and then to criticise the Council for not producing a lay member to give evidence. Members are entitled to disagree with their officers' recommendations. Having done so, the Council produced experienced witnesses with technical evidence to justify both reasons for refusal. It seems to be implicit in the application that such advice needs to have been available at the point when the decision was taken but this is not so. Only if the Council had failed to find appropriate experts would costs be justified.

### **Conclusions**

6. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
7. Whilst I acknowledge that the Council has recently decided to grant outline planning permission for residential development on the H F Shaw site without establishing noise amelioration measures, I do not have full details of the circumstances in which this arose. The Council argued that it had subsequently experience problems in arriving at a satisfactory arrangement and I do not doubt that this is the case. Although I have come to the view that appropriate conditions could be devised in the appeal case, it seems to me significant that the discussion of those conditions at the inquiry was a protracted and iterative process, going well beyond the matters discussed when the application was being processed. I do not consider that the Council acted unreasonably in refusing permission in circumstances where it was not evident that satisfactory conditions could be devised.
8. So far as the provision of evidence is concerned, there is nothing in Circular 8/93 to suggest that members should have had evidence to support their decision at the time it was made. All that paragraph 9 requires is that they should be able to show that they had reasonable grounds for taking a decision contrary to advice. The evidence provided by the Council was from properly qualified and experienced professionals and dealt directly with the reasons for refusal. Although I have come to a different conclusion on the merits of the arguments, I do not consider that the Council behaved unreasonably in taking the stand it did.
9. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

### **Formal Decision**

10. I refuse the application for an award of costs.

*B J Juniper*

INSPECTOR