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## Costs Decision

Hearing held on 23 November 2016 and 7 February 2017

Site visit made on 23 November 2016 and 8 February 2017

**by Tim Wood BA(Hons) BTP MRTPI**

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

**Decision date: 06 March 2017**

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### **Costs application in relation to Appeal Ref: APP/G5180/W/16/3155275 Jackson Road Nursery, Jackson Road, Bromley BR2 8NS**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Langford Walker Ltd for a full award of costs against the Council of the London Borough of Bromley.
  - The hearing was in connection with an appeal against the refusal of planning permission for demolition of existing commercial buildings, removal of existing parking areas and hardstanding and erection of 9 detached houses with associated landscaping and tree planting.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for the appellant**

2. The appellant's claim for costs was made in writing.

### **The response by the Council**

3. The Council's response to the claim was made in writing.

### **Reasons**

4. National Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. In relation to the highways access, the Council initially refused permission due to its likely effects. During the course of the adjournment, the Council's concerns were met by the appellant proposing to widen the access with land apparently within an adjacent residential use. The Council's initial objection related to the width of the access and the inability of vehicles to pass each other and the effects of any consequent waiting on the highway. It was also stated that the access would be used by farm vehicles and would be a shared surface for use by pedestrians.
6. Although there appears to have been no direct comparison by the Council with the likely vehicle movements arising from a full commercial authorised use of the site, their concerns were backed up by a previous appeal decision for a

nursing home (although of some age) and the proposed use by pedestrians and farm vehicles. Whilst I would agree that some account needs to be taken of the likely effects of the existing lawful use of the site, the proposed use would be different in its nature, even if vehicle number were less; it would be more likely to involve pedestrian use of the access and there may be a greater likelihood of residential vehicles clashing in the morning and evening peaks. Therefore, I consider that the Council were right to consider the proposal as they did in this respect. In addition, the Council could not have been aware of the ownership/control issues relating to adjacent land used as part of the residential property and would, quite understandably, not have considered the possibility of imposing a Grampian style condition to widen the access.

7. It is notable that the appellant has included the proposed widening within the amended appeal scheme and appears to accept that this is a preferred solution. Presented with this, the Council confirmed that it no longer objected to the appeal on this basis. With regard to the written views of the Council's highways officer, if these had been presented to the appellants sooner, the same amount of work would still have been necessary in order to address them. Having considered what has been said, I find that the Council has not acted unreasonably in relation to this issue; there was a legitimate concern in relation to the width of the access, this has now been resolved and the Council withdrew its objection.
8. In relation to the matter of the loss of employment land/premises, the original application was accompanied by a relatively short statement from commercial agents providing a summary of their actions in relation to a proposed letting of the appeal site. This was supplemented by a fuller report submitted immediately prior to the November 2016 Hearing date. No expert viability evidence for alternative uses was submitted with the application but was similarly submitted immediately prior to the November Hearing date and further supplemented after that.
9. Whilst I have ultimately agreed with the appellants in relation to the cases put forward, I consider that the Council's position in relation to the evidence initially submitted was justified. I do not consider that it was sufficiently robust and comprehensive enough for a sound conclusion to be drawn from it. The additional information submitted in relation to the marketing includes details of numerous enquiries and on the basis of this and the evidence presented later, a clearer view can be taken.
10. I have to consider that there were considerable exchanges of information during the adjournment and as late as January 2017. I am also aware that new information or views will have to be commented on by the Council's experts, some of whom are not directly employed by them. This would mean that there may be insufficient time for the Council to fully consider these matters before preparing their own up-dated statement. In any event, I consider that the Council has shown that their response to the information that they initially received was appropriate and that, where they have been able, they have made reasonable decisions, notwithstanding the fact that, ultimately, I have disagreed on the planning merits of the case.
11. In relation to the Green Belt argument, the Council have cited Policy G1 of the UDP in its case, but I find that they have centred their case on the requirements of the Framework and have not placed undue reliance on Policy

G1, which is not wholly consistent with the Framework. There is some reliance placed by both main parties on the Certificate of Lawfulness issued by the Council. This refers to the use of the site as a composite but also describes uses of various buildings. Whilst my view is that the term 'composite' has a meaning which I set out in the main decision, in the context of this appeal, the Council appear to have used it more flexibly and have implied a different view on its implications for the appeal. Whilst I am firm in my view, I can accept that there could possibly be some ambiguity in the interpretation of the Certificate and I do not consider that this is sufficient to justify an award of costs.

12. Reference is made to the housing land supply position within the Borough and the conclusions of the Council and the appellants vary. I have determined in my main decision that the proposal represents development that is not inappropriate within the Green Belt. Therefore, it has not been necessary to consider other matters that may have otherwise been considered in the balancing exercise in relation to the effects on the Green Belt, as if I had found it inappropriate development. As such, it has not been necessary for me to conclude on the housing land supply position as I have found no Green Belt harm. In this context it would be inappropriate for me to seek to conclude on the reasonableness of a matter that is not determinative in this appeal.

### **Conclusion**

13. In the light of my findings, I conclude that there has been no unreasonable behaviour by the Council. Consequently, the application for an award of costs is refused.

*S T Wood*

INSPECTOR