
Costs Decision

Site visit made on 3 May 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 22nd May 2017

Costs application in relation to Appeal Ref: APP/W4325/W/17/3169128 4 Holm Lane, Prenton, Wirral CH43 2HP

- 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 Mr Graham Smith for a full award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may 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. There is one claim to assess: whether the Council prevented a change in the hours of nursery outdoor play that should clearly have been permitted having regard to the absence of objection from Environmental Health on noise grounds and changes to the surrounding environment.
 3. In relation to the first matter, Environmental Health did not object to longer outdoor playing hours on the basis that no noise complaints had been received in relation to the nursery. However, for the reasons that I gave in the appeal decision, in my view, this indicates that the condition is achieving its aim by strictly limiting the duration of noise and disturbance from the use, rather than demonstrating that noise from the nursery is not intrusive.
 4. With regard to changes in the environment, there have been two. The first is the new triple garage that has been built within the grounds of Woodbine Cottage along the common boundary with the nursery's outdoor play area. However, to be effective as a noise barrier the building would need to extend along the whole length of the common boundary. As it does not, noise levels within the front garden to Woodbine Cottage have not been reduced. The second change is that what was shown on the original approved plans for the nursery as a pram store enclosed by brick walls is now a covered outdoor play area with a lightweight roof. As a result, children are playing closer to the small courtyard to the side of Woodbine Cottage and the rear garden of No 8 than was proposed when permission was granted for the nursery, increasing the likelihood of noise and disturbance to the small courtyard to the side of Woodbine Cottage and the rear garden of No 8. As a consequence of these two changes the potential for noise and disturbance has not decreased.
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5. The Council therefore did not prevent a change in the hours of nursery outdoor play that should clearly have been permitted having regard to the absence of objection from Environmental Health on noise grounds and changes to the surrounding environment. For the reasons I have given, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. An award of costs is therefore not justified.

Ian Radcliffe

Inspector