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## Costs Decision

Site visit made on 31 May 2017

**by Stephen Hawkins MA MRTPI**

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

**Decision date: 20<sup>th</sup> June 2017**

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### **Costs application in relation to Appeal Ref: APP/D0121/W/17/3167087 Cowslip Lane, Hewish BS24 6AH**

- 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 A Mead of Puxton Ltd for a full award of costs against North Somerset Council.
  - The appeal was against the refusal of planning permission for change of use from offices to children's nursery.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
  3. An award of costs is sought on substantive grounds. The applicant's case in summary is that the Council did not determine the application properly. In particular, the applicant considers that the Council misdirected itself by not considering a relevant policy. Also, it failed to take into account the need for the facility, local support, site sustainability and the availability of non-car travel opportunities. The Council's officer report also contains errors, so that a full explanation of relevant considerations has not been given. Further, the Council submitted new evidence in response to the appeal to which the applicant had to respond, thus incurring additional expenditure.
  4. In response, the Council said in summary that Policy DM54 of the adopted North Somerset Sites and Policies Plan (SPP) encourages schools and community halls in order to enhance access for rural communities, but it has to be read in context with other relevant policies. Policy DM68 defines a children's nursery as a community facility, which falls within Policy CS25 of the adopted North Somerset Core Strategy (CS) and Policy DM69. Policy DM54 does not specifically refer to nurseries and the applicant did not explain how the proposal would enhance access to the rural community. The proposal is not acceptable under Policy DM69. The officer report assessed matters such as the need for the facility, use by visitors to the nursery and its accessibility by a
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range of transport modes. Letters of support were taken into account. The officer report does not contain any errors. In relation to the evidence submitted with its written statement, the Council said that the evidence concerning the level of local need for nursery places was intended to address the evidence in the applicant's own statement. This information was provided by the Local Education Authority (LEA) and had previously been available on the Council's website.

5. At paragraph 049, the PPG provides a list of examples of when a Council might be at risk of an award of costs due to unreasonable behaviour concerning the substance of the case. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other considerations; failing to produce evidence to substantiate their reasons for refusal at appeal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis, and; refusing permission where suitable conditions would enable the development to go ahead. The list is not exhaustive.
6. I have carefully scrutinised the officer report. A paragraph in the report describes the applicant referring to policies that relate to employment development, by which it can reasonably be inferred that the officer was referring to Policy DM54. The officer concluded that the proposal was covered by a specific policy, Policy DM69. Elsewhere in the report, the Council identified CS and SPP policies which it considered were particularly relevant to the proposal. Many policies of the Development Plan might have some relevance to the appeal scheme. To refer to them all in detail would make officer reports inordinately long and time consuming in their preparation. Therefore, the Council adopted a proportionate approach. Consequently, whilst Policy DM54 has not been explicitly named in the report, I do not read this as indicating that the Council did not assess the proposal against it and the Development Plan as a whole.
7. The officer report clearly shows that in concluding that there was not a local need for additional nursery places, it had assessed the applicant's argument against information supplied by the LEA at the application stage. The report also gave detailed consideration to the accessibility of the appeal site from nearby settlements by means other than the private car. Given the Council's assessment and conclusions on this matter, any further assessment of the availability of other non-car means of accessing the appeal site would most likely have been a disproportionate response, particularly as the applicant had not described these in detail in the planning application. The Council also considered the local support for the proposal in the report. However, local support would not be a good reason for allowing a development which did not accord with the Development Plan.
8. The applicant is not specific regarding the errors identified within the officer report. Therefore, I have assumed that this matter arises from paragraph 3.5 of their appeal statement. It is evident that there are minor grammatical errors in the relevant paragraph of the report. However, it is also clear the Council considered that use of the proposed nursery would not be limited solely to employees of Puxton Park and/or by visitors using other facilities within the attraction. It also considered the use of conditions. Therefore, there are not

any significant errors in the report which could have materially affected how the Council dealt with the matters at issue.

9. Finally, it is entirely reasonable for the Council to provide evidence in the written statement which amplifies its reasons for refusing planning permission. If that were not the case, there would be no point in the Council being able to submit a written statement in response to an appeal. In preparing their appeal, the applicant could have sought their own advice from the LEA, in which case they would have obtained similar information. Moreover, the applicant had an opportunity to respond to the evidence contained in the Council's statement.
10. For all of the above reasons, I consider that the Council has been able to substantiate its case at the appeal. There is nothing vague, generalised or inaccurate about the Council's evidence. Conditions could not overcome the harm identified in the reason for refusal. Consequently, the Council have not prevented or delayed development which clearly should have been permitted. Therefore, none of the criteria in paragraph 049 of the PPG apply and the conditions for an award of costs at paragraph 030 have not been met.

### **Conclusion**

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Stephen Hawkins*

INSPECTOR