



Costs Decision

Site visit made on 8 November 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 24 November 2022

Costs application in relation to Appeal Ref: APP/N1730/W/22/3290378 Land adjacent to Hollybush House, Hawley Green, Blackwater

- 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 Tim Ellis for a full award of costs against Hart District Council.
 - The appeal was against a grant of planning permission subject to conditions for Minor Material Amendment (S73 application) of planning permission (ref: 15/02998/FUL) granted on 14.07.2016 for the construction of a two-storey building for F1 use (previously D1) as a Community Nursery with new access and associated parking and landscaping.
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Decision

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

Reasons

2. The 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. In this instance, the applicant alleges that the Council has made a series of procedural and factual errors in its determination of the appeal application, which have necessitated this appeal. It is also alleged that the imposition of condition no. 8 does not meet the tests set out in the National Planning Policy Framework (2021) (Framework).
3. Condition no. 8 of the Extant Permission (21/01632/AMCON) required highway safety measures to be implemented in accordance with details approved under discharge of condition approvals referenced 15/02998/CON and 19/02006/CON. However, the details approved under these discharge applications did not reflect the highway safety measures which had been agreed between the applicant and the Council's Technical and Environment Services Team (shown on General Arrangement Drawing (GA) D1361-100 (GA Drawing)).
4. Notwithstanding this error, the crux of the applicant's appeal hinges on whether or not condition no. 8 meets the tests for imposition of a condition, as set out in the Framework. As I have concluded, I agree with the Council that in broad terms, the condition is necessary to make the development acceptable in planning terms. This is because the highway safety measures secured by the condition are needed to procure safe pedestrian access to and from the new nursery. Irrespective of the condition's wording, the applicant would therefore

not have avoided the appeal process but for these errors, as they have sought to remove the condition entirely.

5. Similarly, any delays in terms of approval of the technical drawings and/or progression of the necessary s278 agreement, whether by the Council or by Hampshire County Council, have no bearing on the merits of the imposition of the condition. In turn, any such delays cannot be said to have caused the applicant unnecessary or wasted expense in the appeals process, as the appeal would likely still have been pursued.
6. Whilst reference to the incorrect Use Class in condition no. 13 is unfortunate, in practice, it is difficult to envisage a situation where the Council would have precluded occupation of the development on the basis of this error, as the description of development explicitly permits a community nursery. It is clearly just a referencing error. Moreover, the condition precludes any change of use within the same Use Class (pursuant to permitted development rights) in any event, which means the applicant has not been unfairly prejudiced by an inability to change the permitted use of the premises in this way.
7. Whilst this error has now been corrected as part of this appeal, once again it cannot be said to have necessitated the appeal in the first place. The reference to Use Class F1 could have been rectified via an alternative route (for example a section 73 application), rather than via the appeals process. The error also has no bearing on the primary purpose of the appeal, which was to remove condition no. 8 entirely.
8. Pulling these factors together, any errors on the part of the Council would not have avoided the need for appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

James Blackwell

INSPECTOR