
Costs Decision

Site visit made on 17 August 2023

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Costs application in relation to Appeal Ref: APP/M4320/W/23/3318186 Chatterbox Nursery, 18 Avondale Road, Southport PR9 0ND

- 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 & Mrs Taylor for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the decision of the Council to refuse planning permission for development without complying with conditions subject to which a previous planning permission was granted. The planning application sought the variation of conditions 3, 4 and 5 pursuant to planning permission N/2004/0467 approved on 22 June 2004 to allow up to 36 children/babies to attend the nursery, installation of a fire escape and reduction in the permitted hours of business.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal.
3. The basis of the Appellant's application for costs is firstly on the grounds that the Council acted unreasonably by failing to adopt a balanced approach towards its assessment of the appeal proposal. In particular, that planning permission was refused singularly on the basis of a previous (dismissed) appeal decision. The Appellant considers that the weight attached by the Council to the dismissed appeal was unreasonable.
4. Secondly, that the Council has failed in its duty to consider whether the perceived unacceptable development can be made acceptable through the use of planning conditions. In particular, that the perceived impacts resulting from the use of the external play area could be effectively controlled by condition, or a combination of conditions, that would serve to protect the amenity of neighbouring residents. The Appellant considers that the imposition of conditions would deliver betterment over the existing position.
5. In considering the first ground for the award of costs, the relevant previous appeal decision was in respect of a proposed increase in the number of children by 16 places (Ref: APP/M4320/A/09/2100473). In dismissing the appeal, the

Inspector found that *“the additional children proposed mean that there would be a greater number and frequency of outside play sessions. Given the natural exuberance of young children this would result in unacceptable additional noise. Surrounding occupiers would have the enjoyment of their rear gardens unacceptably diminished and may also experience adverse effects within their accommodation if windows were open”*. The Inspector concluded that the proposal would harm the living conditions of the occupiers of nearby dwellings.

6. It is an established planning principle that each application has to be considered on its own individual merits. However, in my view, it is quite understandable that the Council had regard to the previous appeal decision in the consideration of the proposal. Although this related to a proposed increase from 26 to 42 children, the Inspector recognised that the Appellant, at that time, explained that the numbers of children playing outside would not change but concluded that there would be a greater number and frequency of outside play sessions. Such circumstances are very similar to those in the appeal before me.
7. I do not share the Appellant’s view that planning permission was refused singularly on the basis of a previous (dismissed) appeal decision. On fair reading of the Officer Report, the Council clearly considered, and took into account, those aspects of the application that were considered acceptable and explained its reasons why the issue of noise remained a concern. The Council also recognised that there would likely be some betterment by revisions to the opening hours. Consequently, I do not consider that the decision of Council was unreasonably unbalanced.
8. Turning to the second ground for an award of costs, the Officer Report demonstrates that the Council considered the conditions proposed by the Appellant and explains that a condition limiting the number of children using the external play area would not be reasonable or enforceable. Further consideration of the other conditions is set out in the Planning Statement. Although I found differently to the Council on this matter, it does not mean that it failed in its duty to consider whether the perceived unacceptable development can be made acceptable through the use of planning conditions.
9. I do not find that the Council was wrong in its approach or subjective judgement regarding the consideration of the impact on the living conditions of nearby residents. In this regard, I accept that the Council was understandably guided to some extent by the previous appeal decision but also the relevant policy (HC3) contained within the development plan. The evidence provided in this appeal demonstrates that the Council properly considered the proposed development against the relevant policy contained within the Local Plan for Sefton.
10. In this case, neither party provided any technical evidence regarding the potential effect of noise emitted from the use of the external play area on the living conditions of nearby residents. In these circumstances, the Council’s subjective judgement on this matter is not unreasonable. It is a matter for the decision maker to consider the extent to which harm would be caused to the living conditions of nearby residents as a consequence of the proposed development. In this case, this was a subjective judgement relevant to policies contained within the development plan and the previous appeal decision but

also took into account potential betterment and the use of planning conditions suggested by the Appellant.

11. Accordingly, I do not find that the Council failed to properly evaluate the application or failed to properly consider the merits of the scheme. The reasons for the refusal of planning permission were adequately stated by reference to the appropriate policy contained in the development plan that the proposal was in conflict with. I have found that the Council had reasonable concerns about the harm to the living conditions of nearby residents which justified its decision. Furthermore, the Council adequately explained its reasoning why some of the additional conditions suggested by the Appellant would not accord with paragraph 56 of the National Planning Policy Framework. Therefore, in my view, the appeal could not have been avoided.
12. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR