Horsham District Council

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Date: 22/10/2026

Town and Country Planning Act 1990
Appeal by T and J Portfolio LLP
Site Address: 3 Abingworth Crescent, Thakeham, RH20 3GW

1. Introduction

1.1. This Statement responds to the Appellant's application for an award of costs in relation to the appeal concerning the amendment of Condition 8 of previously approved application DC/18/2594 at 3 Abingworth Nurseries, Storrington Road, Thakeham, West Sussex. The Council contests the application in its entirety and submits that the statutory and policy tests for an award of costs have not been met.

1.2. The Planning Practice Guidance sets out that costs may be awarded where:

- *A party has behaved unreasonably; and*
- *The unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.*

Paragraph: 030 Reference ID: 16-030-20140306
Revision date: 06 03 2014

1.3. Furthermore, the context of 'unreasonable' behaviour is either:

- *Procedural – relating to the process; or*
- *Substantive – relating to the issues arising from the merits of the appeal.*

Paragraph: 031 Reference ID: 16-047-20140306
Revision date: 06 03 2024

1.4. Application DC/26/1153 sought to remove Condition 8 of previously approved DC/18/2594, which read:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), the ground floor of the premises hereby permitted shall be used for a veterinary surgery and retail unit and for no other purposes whatsoever, (including those falling within Classes D1 or A1 as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in

any statutory instrument revoking and re-enacting that Order with or without modification) without express planning consent from the Local Planning Authority first being obtained.

1.5. Instead, for reasons set out below, the Council felt it necessary to vary the wording of Condition 8, to provide greater flexibility of use while also safeguarding the amenity of nearby occupants (including those above the units within the same building) and ensuring adequate access to goods and services. The varied condition reads:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning (Use Classes) Order 1987 (as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) (or any order amending of revoking and/or reeenacting these Orders):

- *The ground floor of the premises originally permitted as a veterinary surgery shall be used for Class E(a), (c), (e) or (g)(i) use only and for no other purposes whatsoever without express planning consent from the Local Planning Authority by way of application; and*
- *The ground floor of the premises originally permitted as a retail unit shall be used for Class E(a) use only and no other purposes whatsoever without express written consent from the Local Planning Authority by way of application.*

1.6. The Appellant alleges that in varying the wording of Condition 8 of DC/18/2594, rather than removing it in its entirety, the Council *'acted unreasonably…in both a procedural and substantive respect'*. The Appellant contends that the Council acted unreasonably by:

a. Failing to determine the application in accordance with national policy and material considerations resulting in a delay.
b. Basing decisions on vague and generalised comments which were not supported by evidence.
c. Not determining the application in line with previous determinations at the site.
d. Failing to engage with the applicant prior to determination.

1.7. The Appellant further contends that the above conduct has directly resulted in the bringing of this appeal which has resulted in costs related to its preparation.

1.8. The Council submits that the matters raised by the Appellant amount to a disagreement in planning judgement concerning the removal of Condition 8, rather than evidence of unreasonable conduct. As set out below, the Council had a reasonable planning basis for amending Condition 8 rather than allowing its complete removal and did not cause the Appellant to incur unnecessary or wasted expense.

1.9. Accordingly, the Council submits that the Appellant has failed to demonstrate either that the Council acted unreasonably, or that any alleged conduct directly

caused unnecessary or wasted expense. For these reasons, the application for an award of costs should be dismissed.

2. The Council's Planning Position

2.1. Given the differing outcomes of the planning assessment for the veterinary surgery and the shop, the Council considers it necessary to discuss them separately below.

Veterinary Surgery

2.2. Policy 33(2) of the Horsham District Planning Framework (HDPF, 2015) requires all development to ensure that it avoids unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through noise or overlooking. This is further supported by NPPF paragraph 198 (relevant at the time of the decision) which seeks to ensure that new development is appropriate for its location taking into account the effects of pollution on health, living conditions and the natural environment. It is recognised that a new NPPF has been published since the decision, with paragraph 198 replaced by Policy P3. The nearest residential dwellings are located within the same building as the veterinary surgery and retail unit, comprising two upper floor flats.

2.3. Prior to determination of application DC/26/1153 the building had permission to operate solely as a veterinary surgery. These typically operate on a 'by-appointment' basis thus restricting the number of visitors and unlikely to result in significant amenity impacts. It is acknowledged that there may be noise arising from dogs barking however this was discussed in the Officer Report for DC/18/2594 and not considered to be significantly harmful.

2.4. Despite the proximity of residential dwellings, including within the same building directly above the unit, the Council felt that it would be acceptable to allow some flexibility in the use of the veterinary surgery within Class E. It was however not considered appropriate to allow unfettered Class E use given the breadth of the uses within the class and the potential for some of these to result primarily in noise and general disturbance impacts. It was therefore determined that Class E (b), (d), (f), (g)(ii) and g(iii) would be inappropriate.

2.5. It is noted that the Appellant has only disputed the restriction of Class E (b) and (g)(ii)(iii) in their statement, citing the context of the area and the fact that (g) has a specific requirement for there to be no amenity impacts. This provides support to the argument that at least some amenity impact exists from the removal of Condition 8, in line with the Council's views. The Council acknowledge that the existing retail unit next door operates an ancillary café however this mainly sells hot/cold drinks and snacks with a likely peak use in the daytime. Class E(b) also covers restaurants which are likely to result in a different usage pattern to both the veterinary surgery and the retail unit (with ancillary café) with a greater potential impact on amenity, particularly when the existing residents are living upstairs. Regarding Class E(g)(ii)(iii), the research and development of products and processes (E(g)(ii)) and light industrial processes (E(g)(iii)) both have the potential to lead to noise and vibration impacts as well as increased activity in and around the building. Given that the nearest neighbours reside within the building itself, they are likely to be more sensitive to these pathways than those living in separated dwellings and there is no evidence that the building has

incorporate mitigatory measures. It is therefore considered that the restrictions posed are appropriate in this case.

Shop

2.6. It is noted that the Appellant considers the decision of the Council to continue to restrict the use of the retail unit to be unreasonable, as the reason given for the condition has been significantly altered from that of the parent permission (DC/18/2514 – amenity concerns). They also contend that within Officer Reports for both DC/18/2514 and DC/10/1314 no mention is made of the protection of the shop nor that the shop was inherently necessary for the sustainability of the wider development.

2.7. The wider site in which the veterinary surgery and retail unit sit was granted permission under application DC/10/1314 and comprised a total of 146 dwellings. The site adjoins the existing settlement of Thakeham which is defined as a smaller village in both the existing and emerging development plan. At the time the wider development was permitted, there were no shops in Thakeham and this would be the case should the retail unit discussed in this application cease to exist. While the Officer Report for DC/10/1314 is not explicit in stating that a shop would be required for the sustainability of the wider development, it is inferred throughout the document including in paragraph 1.13 where it is stated that the number of car journeys would be reduced. Furthermore, it is clearly stated in the Officer Report for DC/18/2514 (paragraph 6.2) that the shop was *'considered an important provision and community asset in the original permission*' and is identified as a valuable asset in representations from the Parish and local residents under the same application.

2.8. While the Council acknowledges that the original reason given for applying Condition 8 does not explicitly state that it intends to secure the future provision of a retail unit at the site, this is not considered particularly necessary given that the shop was being retained as part of the permission. The key consideration at this stage was to ensure that the amenity of the residents of the upper floor flats was safeguarded. In contrast, application DC/26/1153 sought to remove Condition 8 in its entirety thus potentially resulting in the loss of the retail unit. It was therefore considered appropriate to refer back to the original permission DC/10/1314 to support the Council's position.

2.9. Given the rural nature of Thakeham and the fact that there remains limited service provision locally that would not require the use of a private vehicle, it is considered appropriate to retain the retail unit as such via Condition 8 unless evidence is submitted as part of a formal planning application demonstrating that it is no longer viable.

Conclusion

2.10. For the reasoning set out above, the Council considers the varying to Condition 8 in the manner set out to be necessary, relevant to both planning and to the development permitted, enforceable, precise and reasonable, in accordance with paragraph 57 of the NPPF (2024) (superseded by DM6, NPPF 2026). It is therefore concluded that the Council has not behaved unreasonably nor caused the Appellant to incur unnecessary costs.