

Costs Decision

Hearing Held on 13 April and 3 August 2021

Site visit made on 4 August 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Costs application in relation to

Appeal A: Ref APP/Y3615/C/19/3235847

Appeal B: Ref APP/Y3615/C/19/3235848

Land at Plot D, Land to east of Wanborough Woods, Westwood Lane, Wanborough, Guildford GU3 2JN registered at HM Land Registry under title number SY853140 and also known as Land on the west side of Westwood Lane, Wanborough, Guildford

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Guildford Borough Council for a full award of costs against Mr Mohammad Fam (Appellant A) and Mr Joseph Fam (Appellant B).
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission the material change of use of the Land from agriculture to a use for the storage of non-agricultural items.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance 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.
3. In particular, the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur, when in enforcement appeals, the onus of proof on matters of fact is on the appellant¹.
4. As a legal ground of appeal (b) was put forward by the appellants, the burden of proof was upon them to persuade me of their case on the balance of probabilities. Yet no hearing statement was made and their only written submission throughout the whole of the appeal procedure was contained within the appeal form, which in respect of ground (b) simply said:

"There was a misunderstanding and/or a confusion in our way of communication which via email, as Lee Payne didn't clarify whether [sic] or not we needed to submit a planning application in his last email".

This was clearly not a submission in respect of ground (b).

¹ Paragraph: 053 Reference ID: 16-053-20140306

5. The appellants did not attend the hearing on 13 April 2021, having not given prior notice of any anticipated absence. The hearing was adjourned in the interests of fairness, and resumed on 3 August 2021. The appellants attended late and despite given a full and fair opportunity to make their case, their evidence was very limited and they failed to properly substantiate their ground of appeal. In particular, against a multitude of evidence from the third parties and council officers indicating the absence of agricultural use of the site, the appellants provided very limited evidence demonstrating such a use. Despite saying they ran a business commercially supplying eggs and small trees (including to at least one other business), they provided no associated documents, accounts, records or receipts in evidence. This was surprising were the stated use to have occurred, and the failure of the appellants to sufficiently substantiate a case to a basic level amounted to unreasonable behaviour. The Council was put to the unnecessary expense of an appeal that should not have been made, since it had no reasonable prospect of succeeding without the appellants providing a reasonable level of substantiation of their ground of appeal.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Mohammad Fam (Appellant A) and Mr Joseph Fam (Appellant B) shall pay to Guildford Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
8. The applicant is now invited to submit to Mr Mohammad Fam (Appellant A) and Mr Joseph Fam (Appellant B), to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR