
Costs Decisions

Site visit made on 10 August 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Costs application in relation to Appeal A Ref: APP/R3650/X/21/3267733 Lower Punchbowl Farm, Hyde Lane, Churt, Farnham GU10 2LR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Steven Domm for a full award of costs against Waverley Borough Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the temporary use of a caravan for the construction of a barn.

Costs application in relation to Appeal B Ref: APP/R3650/X/21/3267737 Lower Punchbowl Farm, Hyde Lane, Churt, Farnham GU10 2LR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Steven Domm for a full award of costs against Waverley Borough Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for a replacement caravan.

Costs application in relation to Appeal C Ref: APP/R3650/C/20/3251487 Lower Punchbowl Farm, Hyde Lane, Churt, Farnham GU10 2LR

- 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 Mr Steve Domm for a full award of costs against Waverley Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a dwellinghouse.
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Preliminary Matters

1. These applications for the award of costs relate to three linked appeals. Appeals A and B relate to the failure of the Council to determine applications for certificates of lawful use or development (LDC). Appeal C relates to an appeal against the service of an enforcement notice. That enforcement notice was withdrawn during the course of the appeal. Consequently, there was no appeal to determine. Nevertheless, an application for an award of costs has been made. The appeals have been linked, so I will determine all three applications for awards of costs in this decision.

Reasons

2. 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 the case of both costs applications relating to the Lawful Development Certificate (LDC) applications, these relate to the necessity to lodge appeals given the non-determination of the applications. These are procedural applications for costs. There is also a substantive application for costs in relation to appeal C

Appeals A and B - certificates of lawful use or development

3. The appellant suggests that it was unreasonable of the Council to refuse to validate the application for a LDC without details of the caravan. They state that they had not decided what form the caravans would take at the time of application.
4. I note the Council state that they requested, by telephone and in person on a site visit, further details of the proposed caravans to ensure that they would meet the definition of a caravan prior to determining the applications. I note the Council intended to work positively with the appellant to ensure the correct information was submitted in order for them to determine the applications. In my opinion, it is not necessary to provide details of the caravans proposed as the Council can reasonably assume they would meet the lawful definition of a caravan. If not, it would be possible to take enforcement action against them. Nevertheless, a request for this information is not unreasonable as it would assist the Council in considering the application. However, as it is not necessary it would be unreasonable to hold up registration or determination of an application prior to its submission.
5. My attention has been drawn to the costs decision relating to appeal reference APP/R3650/X/16/3161457. That also related to a LDC for a caravan, albeit the reasons the caravan was required in that case differed. The Council had refused to determine the application before being provided details of the caravan. The Inspector determined that reference to it being a caravan was sufficient to allow the application be determined. This contributed to his finding that the Council had behaved unreasonably in that case. However, in that case he also found that the Council had behaved unreasonably in relation to how they had considered the proposed use. I note that I have agreed with the Council on that point in these cases.
6. Taking all of the above into account, I conclude that delaying the registration of the application to request details of the caravans was unreasonable behaviour. In the circumstances, this led to a considerable delay. However, it is clear that the Council would have refused both applications in any event. Consequently, this did not lead to unnecessary or wasted expense in the appeal process relating to appeals A and B.

Appeal C - Enforcement Notice

7. The enforcement notice was withdrawn during the course of the appeal. The notice did not set out the reasons for issue, albeit the relevant policies of the Local Plan were listed. Had the reasons for issuing the notice been set out, the appellant may have appealed on ground (a) that planning permission should be approved. As a result, injustice may have been caused had the appeal proceeded. I suggested that it may be a nullity for this reason, and the Council subsequently withdrew it.

8. Issuing an enforcement notice that was defective such that it would subsequently need to be withdrawn is unreasonable behaviour. The PPG states that there is a risk of an award of costs where the local planning authority has not ensured the enforcement notice was accurate. Procedurally, therefore, the application for costs has led to unnecessary or wasted expense in the appeals process.
9. The substantive application for an award of costs relates to the merits of the allegation in the enforcement notice. It is not possible, in an application for an award of costs, to assess the merits of the case. In any event, in this case this would not affect my conclusion.
10. I note that the Council have suggested that they may issue a further enforcement notice against the structure. I have taken that into account in coming to my decision.
11. Taking all of the above into account, I conclude that there was unreasonable behaviour on behalf of the Council that resulted in unnecessary or wasted expense in relation to the procedural grounds. On that basis, I shall make a full award of costs.

Decisions

Appeals A and B

12. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs on appeals A and B must fail.

Appeal C

13. 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 Waverley Borough Council shall pay to Mr Steven Domm, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to appeal C; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Waverley Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

AJ Steen

INSPECTOR