
Costs Decision

Site visit made on 1 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Costs application in relation to Appeal Ref: APP/R0660/X/21/3286936 Woodmoss Farm, Gore Lane, Alderley Edge, Cheshire SK9 7SP

- 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 Ms Sophie Beever for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of existing buildings and associated land for equine purposes.
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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 (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. Awards against a party may be either procedural or substantive.
3. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications. It is asserted that the Council has presented no evidence of its own to contradict or otherwise make the applicant's version of events less than probable and relied on a series of unfounded suppositions.
4. The Council's delegated report refers to statutory declarations as 'letters'. The delegated report states 'Ordinarily, it would be expected that further records and / or photos and / or statutory declarations in support of the use would accompany such an application.' This suggests that the author of the report did not consider the statutory declarations as such.
5. The Council asserts that the statutory declarations were given sufficient weight, however, when explaining why they were found to be ambiguous, the Council has drawn my attention to the letter written by a farrier. The letter written by the farrier was not a statutory declaration but was appended to the applicant's statutory declaration. This leads me to believe that the Council is still not identifying correctly which documents are statutory declarations and which are letters.
6. The Council states that the extent of the land being used is unclear. However, the statutory declarations are accompanied by a plan showing the extent of the site and refers to the plan. The Council states in its delegated report that 'the area outlined in red is extremely large and without sufficient evidence to prove

that the site was used intensively as a livery it has not been proven that all of this land has been used for the exercising of horses.'

7. The delegated report also discusses the office and states that 'The annotated plans show the building to the west of the site having been used partly as an office, which is obviously not an equestrian use, however, could be justified as an ancillary use if the site was used as a livery.' The applicant was not seeking a Lawful Development Certificate for an office use.
8. The Council's concerns regarding 'commercial use' continue through the appeal, despite there being no suggestion in the application documents that the site was used on a commercial basis and the applicant confirming in their appeal statement the site has not been used as a commercial livery. Given the above, it seems to me that the Council has failed to consider the application on the correct basis. This is unreasonable. Had the Council considered the application on the correct basis, it is possible that the appeal could have been avoided altogether. This has caused the applicant to incur wasted expense in pursuing the appeal.
9. In its response to the applicant's costs application, the Council states that 'the declarations or statement did not detail how all of the buildings and land were used, which is particularly essential when considering there was only one horse on the site for some of the application period'. The evidence provided by the applicant shows that a single horse was kept at the site after 28 May 2014. However, the Council fails to consider whether the 10 year period had already accrued by this time.
10. The case officer, in correspondence with the applicant, states 'Obviously, we need to confirm that the whole area of land was used for a continuous period of 10 years up to the application date.' The Council also states in its delegated report 'It is for the applicant to prove, on the balance of probabilities, that the whole of the site including buildings have been used for an uninterrupted period of 10 years prior to the application being [sic] to be immune from enforcement.'
11. This above suggests that the Council has failed to consider any 10 year period prior to the application date and has focussed on the 10 years leading up to the submission of the application. This is contrary the provisions of the Act, which set out at section 171B(3) in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
12. As will be seen from the appeal decision, I have found, on the balance of probabilities, that the use of the site for the keeping and exercise of horses had already accrued lawfulness through the passage of time by 2014. Had the Council considered any 10 year period beginning with the date of the breach, it is possible that the appeal could have been avoided altogether. This is unreasonable and has caused the applicant to incur wasted expense in pursuing the appeal.
13. I acknowledge that the Council did not have the benefit of the updated statutory declarations of the applicant and the owner of Freya's Folly Stables, along with photographs at the time it made its decision. This information has assisted my understanding of the way in which the site has been used. While it would have been open to the applicant to submit a new application with this

additional evidence, given the above, I have no confidence that the Council would have considered such an application on the correct basis either.

14. The PPG advises that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour include delay in providing information and deliberately concealing relevant evidence at appeal.
15. The applicant asserts that the Council failed to disclose evidence, namely a submission by the Parish Council, to the applicant or the Planning Inspectorate. The Council state that the Parish Council was consulted on the original application but chose not to comment. Comments from the Parish Council were received by the Council after it submitted the questionnaire response, however, it has been published on the Council's website for the applicant to view.
16. The Council did not disclose this email as part of the appeal. The email from the Parish Council is dated 13 January 2022. This was before the Council submitted its statement of case and before final comments were exchanged. Although the Parish Council's response was published on the Council's website, since it contained information that was pertinent to the appeal, it was incumbent upon the Council to submit it to the appeal.
17. Furthermore, the Council has failed to review its case following the receipt of the Parish Council comments. Although the Council comments on the Parish Council comments in response to the applicant's application for costs, it focuses on the Parish Council's comments regarding the need for a planning application so that planning merits can be considered.
18. The fact that the Council did not disclose the Parish Council's response to the appeal or review its case following receipt of the comments is unreasonable. However, this did not lead to the applicant incurring additional wasted expense, since the applicant was able to bring it to my attention at the final comments stage.
19. Nevertheless, for the reasons given above, I 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

20. 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 Cheshire East Council shall pay to Ms Sophie Beever, 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. The applicant is now invited to submit to Cheshire East 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.

M Savage

INSPECTOR