



Costs Decisions

Site visit made on 24 October 2022

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 November 2022

Costs application in relation to Appeal A Ref: APP/R3650/X/22/3296280 Land opposite junction of Glen Lea, Nutcombe Lane, Hindhead, Surrey GU26 6BP

- 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 Mrs Angela Jenkins for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the continuous keeping of non-agricultural horses for a period of more than 10 years.
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Costs application in relation to Appeal B Ref: APP/R3650/W/22/3300338 Land opposite junction of Glen Lea, Nutcombe Lane, Hindhead, Surrey GU26 6BP

- 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 Mrs Angela Jenkins 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 change of use from agriculture to a mixed use of agriculture and equestrian use.
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Decisions

1. The application for an award of costs is refused in Appeal A, but allowed in full in Appeal B.

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.

Appeal A

3. The application is made on the basis that the Council had no evidence of its own to contradict the evidence produced by the appellant to support the application, and consequently that it should have reasonably granted the CLU as prescribed by the PPG and relevant caselaw.
4. The Council's view is that the appellant's evidence is not sufficiently precise or unambiguous to grant a CLU, on the balance of probabilities.

5. I have decided the appeal in favour of the applicant, so disagree with the Council that its refusal of the CLU was well founded. However, it was not unreasonable of the Council to argue such a case. In particular, for example, some of the evidence apparently suggested that there had been four equestrian tenants on the site whereas the substantive parts of it only served to prove two tenants; no precise dates in 2015 were given as to when Jane Liverton's tenancy ended and exactly when Lisa Hamilton's begun because the tenancy agreements were not submitted as evidence by the appellant and so the Council was entitled to conclude that there may have been a break in 2015 during which such a use did not take place.
6. Consequently, the Council decided, on the balance of probabilities, that lawful equestrian use had not been established, which it was entitled to do. The fact that I have allowed the CLU does not make the Council's decision unreasonable. Consequently, the application for costs is dismissed.

Appeal B

7. The Council did not decide the application because it had not been validated by the time the applicant appealed against its non-determination. It did not validate the planning application because the applicant had not completed the CIL 1 Form. The applicant claims that it was unreasonable not to validate the application because the application was merely for the mixed agricultural/equestrian use and since it did not involve new build development or dwellings it is in any case not CIL-labile.
8. It may well be the Council's procedure to require a completed CIL 1 Form for each and every application, even if Questions 4 a) and b) are ticked 'no' confirming that there is no CIL liability. But failing to validate an application for such a change of use – which is clearly not CIL-labile – is overly bureaucratic and unreasonable, especially in this case where the Council would have granted planning permission, as it had previously done for the northern part of the field.
9. This unreasonable behaviour has led to the appellant having to bear the wasted costs of appealing the non-determination of this application, which should have been validated by the Council shortly after it was submitted, when it was clear that the development was not CIL-labile, because the Council would have then granted permission, obviating the need for the appeal.

Costs Order

10. 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 Mrs Angela Jenkins, the costs of the appeal proceedings described in the Appeal B 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 the 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.

Nick Fagan

INSPECTOR