



Costs Decisions

Inquiry Held on 1,2 and 3 February 2023

Site visit made on 3 February 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Costs application 1 in relation to:

Appeal A: APP/M1710/X/21/3271902

Appeal B: APP/M1710/W/22/3305231

Appeal C: APP/M1710/W/20/3249462

The Old Barn, Frensham Lane, Churt, Farnham GU10 2QG

- The application is made under the Town and Country Planning Act 1990, sections 78 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Alex Bett, Moonlight Ridge Stables Ltd, for a full award of costs against East Hampshire District Council.
 - The Inquiry was in connection with appeals against the refusal of a certificate of lawful use or development for Existing use of the site (being land extending to 9.64 acres with buildings sited thereon) for commercial equine purposes (Appeal A); the grant subject to conditions of planning permission for Retention of mobile home on the land for a minimum of 3 years as temporary essential rural / equine worker accommodation and change of use of all buildings and land for commercial equine use as a livery yard and stud (Appeal B) and the refusal of planning permission for new permanent essential rural worker's dwelling (Appeal C).
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Costs application 2 in relation to:

Appeal A: APP/M1710/X/21/3271902

Appeal B: APP/M1710/W/22/3305231

Appeal C: APP/M1710/W/20/3249462

The Old Barn, Frensham Lane, Churt, Farnham GU10 2QG

- The application is made under the Town and Country Planning Act 1990, sections 78 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by East Hampshire District Council for a full award of costs against Ms Alex Bett, Moonlight Ridge Stables Ltd.
 - The Inquiry was in connection with appeals against the refusal of a certificate of lawful use or development for Existing use of the site (being land extending to 9.64 acres with buildings sited thereon) for commercial equine purposes (Appeal A); the grant subject to conditions of planning permission for Retention of mobile home on the land for a minimum of 3 years as temporary essential rural / equine worker accommodation and change of use of all buildings and land for commercial equine use as a livery yard and stud (Appeal B) and the refusal of planning permission for new permanent essential rural worker's dwelling (Appeal C).
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Costs Application 1

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises 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.
3. The appellant's claim is based on several complaints about how the Council has dealt with all three appeals. In respect of Appeal A (the application for a lawful development certificate) it says that the Council failed to distinguish the serving of a planning contravention notice from enforcement action; misrepresented and ignored evidence; failed to apply the correct test in reaching its decision and revised its reason for refusal resulting in delay; and failed to issue a pre-application advice report despite this being requested.
4. I concluded in my main decision, having regard to the evidence, that the Council's refusal to grant a certificate of lawful use or development was well founded. Irrespective of the Council's interpretation of the significance of the Planning Contravention Notices, I am not persuaded that the service of this document, in itself, influenced the Council's decision to refuse the certificate. Whilst the Council altered its reason for refusing to grant a certificate, the appellant has had the opportunity to argue their case fully during the appeal proceedings. Furthermore I found the Council's case to have merit. Whether the Council failed a requirement to issue pre-application advice is a matter between the parties. However I am not persuaded, from the evidence before me, that had such advice been given it would have been accepted by the appellant leading to the appeal being averted.
5. With regard to Appeal B, the appellant complains that the Council amended the description of the proposed development unilaterally; that the Council's approach to the wording of condition 1 was erroneous; also that the appeal would not have been necessary, had subsequent applications providing the opportunity to correct and amend planning conditions been determined.
6. I concluded that the amended development description did not result in prejudice. It is clear from the evidence that the Council had not intended to restrict the commercial equine use of the site to a temporary period, as it had the residential use of the mobile home. However the wording of Condition 1 refers to the ending of uses (plural) after a definite limited period. It goes on to refer to various structures needing to be removed from the site following this limited period. In addition to the mobile home this includes the manege and 'other structures'. I am therefore in no doubt that the wording of the condition itself could only reasonably be interpreted as permitting both the residential and equine uses for a temporary period.
7. The Council says that this is not the end of the matter, because having regard to case law², it is necessary to construe the permission as a whole in its full context. The reason for the condition, it says, refers to the site being used for equine livery purposes only, therefore differentiating the permanent status of

¹ Reference ID: 16-030-20140306

² *Barton Park Estates Ltd v Secretary of State for Housing, Communities and Local Government & Dartmoor NPA* [2022]

the equine use from the temporary status of the residential use. Whilst the reasoning for the condition could be interpreted in this way, I am not persuaded that it serves to clarify the condition, rather than make the condition more ambiguous when read as a whole. It is not at all unreasonable for the appellant to have been very concerned regarding the construction of Condition 1.

8. However, I have had regard to the fact that the Council effectively conceded the problematic nature of the condition wording at a relatively early stage in the process, setting out suggested revised wording in its statement of case. This revised wording has essentially been agreed by the appellant, the substance of the matter not taking up significant Inquiry time.
9. I am also mindful that there are other conditions attached to the same permission in relation to which the appellant originally sought their deletion, but which they ultimately accepted, albeit with revised wording³. Accordingly, even if condition 1 had been correctly worded at the outset, it seems likely to me that an ultimately unsuccessful case in relation to the aforementioned other conditions would have been maintained.
10. In this context I find that there has not been unreasonable behaviour which has resulted in unnecessary or wasted expense in the appeal process. That the Council declined to determine subsequent planning applications is outside the remit of this Costs application.
11. Turning to Appeal C (the permanent dwelling), the appellant says that in live evidence the Council withdrew its "objection under essential need"; that highway related concerns were not recognised by the Highway Authority; that the Council's criticism of the Landscape and Visual Impact Assessment was not robust; that the Council misapplied or ignored development plan policies including that it was too reliant on policy guidance rather than the wording of the policy itself in terms of objecting to the scale of the dwelling; also that the application of the guidance contradicted its approach to a different case elsewhere.
12. I agree that the Council appeared to resile from its stance questioning the functional requirement for a permanent residential presence on the site⁴. However I have taken into account that the previous Inspector was not persuaded at that time as to the functional requirement for a permanent dwelling. Following this it seems to me that the Council was only persuaded to its present position subsequent to the receipt of the substantial bulk of the appellant's evidence in this regard in 2021, and following the receipt of the planning application the subject of Appeal B.
13. The Council, in determining that parking provision within the site was insufficient, was not duty bound to follow the advice of the Highway Authority. It appears that following determination of the planning application, drawings were submitted demonstrating a proposed parking layout within the site, in order to address the Council's concerns. Ultimately the Council has accepted this layout but said that it maintained the refusal reason on grounds that to

³ Condition nos. 4, 7 and 10.

⁴ See paragraph 4(1) of Council's closing submissions.

allow a riding school use, as part of the proposed commercial equine use, would have caused it concern. That the appellant has agreed to a condition being imposed prohibiting a riding school in relation to the subsequent application and appeal for the permanent commercial equine use of the site does not equate to it being unreasonable to refuse planning permission for the permanent dwelling because of outstanding concerns at that time regarding occupier / visitor parking.

14. The Council has been able to substantiate why it considered the proposed dwelling to be unacceptable on grounds of visual impact and essential need, having regard to the decision of the previous Inspector. Whilst I did not agree with the Council's position, the allegation that it misapplied or ignored development plan policies is not compelling. I have set out in the main decision that Policy CP6 of the Council's Core Strategy (CS) does not apply to and weigh in favour of the appellant's case, and therefore concur with the Council in this regard. Each application must be dealt with on its individual merits, and I do not find unreasonable behaviour in this regard.
15. Finally that the Council threatened costs applications that the appellant felt to be without merit is not in itself an unreasonable act. I therefore find that in relation to all three appeals unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs Application 2

Decision

16. The application for an award of costs is refused.

Reasons

17. Paragraph 053 of the PPG⁵ advises that 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 the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period. The Council's case is that unreasonable behaviour has been demonstrated in relation to all three appeals.
18. With regard to the LDC case (Appeal A), it says that the appeal was inappropriately brought given that it could not succeed in view of the mixed residential and equine use that commenced at the site. It also says that the same appeal was inappropriately maintained in view of the Council granting permanent planning permission for commercial equine use of the site.
19. I have set out in the main decision that the emergence of the mixed use was not necessarily fatal to the immunity period claim, on the basis that any 10-year period of continuous use might potentially be sufficient to demonstrate the appellant's case. Whilst I did not agree with the appellant's case on the

⁵ Reference ID: 16-053-20140306

balance of probability, I do not agree it was so lacking as to be unreasonable. Neither can it be said that maintaining the LDC appeal, following the grant of conditional planning permission, was unreasonable given that an LDC certificate, unrestricted by planning conditions, would have put the appellant in a more advantageous position. This therefore distinguishes its value from that of planning permission, explaining why it would not be unreasonable for the appellant to continue to pursue both awards.

20. The Council says that the Appeal C followed in the wake of a recently dismissed appeal for a similar permanent dwelling on the site. However, the appeal in question is not so recent, having been determined around four years ago. Furthermore as set out in the main decision there are features about the design of the dwelling that distinguish it from the unsuccessful proposal. Moreover, even if the profitability of the business has continued not to be significant, the intervening period has at least allowed for the presentation of significantly more accounting information, with a view to making a more robust case for a permanent dwelling. In view of the aforementioned considerations I am not persuaded that circumstances have not materially changed in the intervening period, such that the appeal was made unreasonably.
21. The Council further argues that the appellant sought to rely on an irrelevant policy, namely Policy CP6 of the CS. Whilst I agreed with the Council in this regard, I am not persuaded that reference to the policy in support of the appeal went as far as amounting to unreasonable behaviour.
22. Finally the Council argues that Appeal B need not have been brought at all, as it would have been possible to secure the amendments sought to various planning conditions through discussion with the Council. Even if this is the case, quite simply the Act allows for an appeal to be made directly against planning conditions imposed by the Council on a new planning permission. That is the circumstances of this case, and it cannot therefore be arguable that to follow this course of action, which resulted in securing reasonable amendments to a number of conditions, was unreasonable, even if alternative remedies may have been available to the appellant. Any discussion at the Inquiry regarding the Council's decision notice banner was minimal and did not therefore result in any significant waste of Inquiry time.
23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

R Merrett

INSPECTOR