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## Costs Decisions

Site visit made on 20 March 2023

**by S Harley BSc(Hons) M.Phil MRTPI ARICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 June 2023**

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### **Costs application A in relation to Appeal Ref: APP/Y9507/W/22/3292828 Land West of The Drove BN6 8TR Easting: 532333, Northing: 115192**

- 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 Mr Conrad Howard for a full award of costs against South Downs National Park Authority.
  - The appeal was against the failure of the Authority to issue a notice of their decision within the prescribed period on an application for planning permission described on the application form as "'Sui Generis' - use of land for the keeping of 5 or more horses. The 'Sui Generis' Change of use started some time prior to 2007".
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### **Costs application B in relation to Appeal Ref: APP/Y9507/W/22/3292828 Land West of The Drove BN6 8TR Easting: 532333, Northing: 115192**

- 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 South Downs National Park Authority for a full award of costs against Mr Conrad Howard.
  - The appeal was against the failure of the Authority to issue a notice of their decision within the prescribed period on an application for planning permission described on the application form as "'Sui Generis' - use of land for the keeping of 5 or more horses. The 'Sui Generis' Change of use started some time prior to 2007".
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## Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

## Preliminary Matters

3. The site location in the banner heading above is taken from the application form. Other documents describe the location differently and this is explained in my appeal Decision. For the reasons set out in that Decision I considered the appeal before me which relates to application Ref SDNP/21/00894/FUL (the current appeal)<sup>1</sup> as seeking permission for equestrian use of the land.
4. 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. Whilst parties normally meet their own expenses, they are also expected to behave reasonably to support an efficient and timely process. The PPG goes on to state that the award of costs can relate to either the procedural

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<sup>1</sup> There is a different appeal relating to the land Ref APP/ Y9507/W/22/3312458, in respect of planning application SDNP/22/05658/FUL which will be the subject of a separate Decision

handling of the matter or substantive aspects, that is in relation to the merits of the appeal.

### **Submissions in respect of Application A**

5. The applicant considers the South Downs National Park Authority (the LPA):

- inaccurately interpreted planning law: this resulted in the refusal to grant a Certificate of Lawfulness for an Existing Use or Development (CLEUD); officers gave conflicting views about whether planning permission would be required for the keeping of horses; examples were cited that have little relevance to the current appeal.
- caused delay: the Questionnaire and Statement were submitted late and were not copied to the applicant; relevant information was deliberately concealed; new reasons for refusal were introduced during the appeal process; documents were not published on their website in a timely fashion; delay in deciding the planning application was not explained.
- should have granted permission: permission Ref LW/11/0917/NP on the opposite side of Keymer Road set a precedent for equestrian use; there were no reasonable grounds for refusal; expert evidence about flooding, highway concerns or the landscape/strategic gap was not sought; the reasons for refusal were not substantiated; matters should have been discussed with the appellant and could have been dealt with by condition; there was inconsistent advice and decision making between different cases; Lewes Council officers advised the LPA that proposed equestrian use would be likely to comply with planning policy and that there were no actual changes to the land and the LPA ignored this.

### **Response from LPA/Application B**

6. The LPA submitted a response to the applicant's claim for costs and included a counter claim for costs against the applicant. The LPA:

- identifies that the current appeal does not relate to the CLEUD decision.
- considers that information from other applications can be a material consideration that can be taken into account; that professional judgement and experience were properly exercised and that the applicant made reference to cases not relevant to the current appeal.
- acknowledges and apologises for the procedural short comings and delay in publishing of documents on the website which were due to staffing pressure; the appeal documents were submitted on the final due date, the Planning Inspectorate supplied the information to the applicant and the documents were published as soon as practicable afterwards; the applicant submitted extensive information both during the application process, including on what the LPA considered to be the due date for deciding the application, and during the appeal process even though further comments should not have been allowed; the current appeal took the case out of their jurisdiction; there were communications with the applicant by telephone and email and advice was given during the planning application process including an explanation of the delay in determining the application.

- the decision on LW/11/0917 did not set a precedent because it pre-dates the adoption of the South Downs Local Plan 2019 (the LP), that site has a different character to the appeal site and the proposal was not retrospective; the putative reasons for refusal were clearly set out in the LPA's Appeal Statement.
- The costs would have been the same for an appeal against refusal or non-determination and the LPA's actions did not alter these; the applicant did not use consultants.

### **Response from the applicant**

7. In response to the LPA's claim, the Applicant indicates that additional information was only submitted in response to Statements made. As the current appeal was against failure to determine the application, he could not have been aware of the LPAs reasons for refusal. He complied with deadlines. Although the LPA considered matters could not be dealt with by condition the LPA then referred to a number of conditions that could be used as mitigation.

### **Reasons**

8. The appeal relates to a piece of land in the South Downs National Park. In summary I found that equestrian use would not have an adverse effect on the character and appearance of the area; that the location is suitable for equestrian use, and that access arrangements would not be so unsuitable as to justify withholding permission subject to conditions.
9. There have been a number of applications relating to the land in recent years. On all sides there has been conflation of different cases and what appears to be some confusion about which matters are relevant to the different applications/appeals. Both Parties consider the other to have cited cases not relevant to the current appeal but, other than the conflation of the different cases on the site, neither Party has been specific about what these are. Information from other cases can be a material consideration and, in considering the evidence related to the current appeal, I did not find significant non-relevant evidence that could not be disregarded.
10. The current appeal does not relate to the refusal of the CLEUD so it is not for me to consider the merits or otherwise of that refusal or other uses that may, or may not, benefit from permitted development rights.
11. It appears that officers may have given conflicting advice about whether planning permission would be required for the keeping of horses. Whilst this is regrettable, I am satisfied that permission is required for the keeping of horses as described in the application; it is clear that the appellant understood this and made the application; and that this could have resulted in the refusal of permission.
12. The Questionnaire and Statement were submitted on the deadline; this would not amount to unreasonable delay in providing information. The failure to copy these to the applicant or to publish them on the website is regrettable and is not reasonable behaviour by the LPA; nor is the fact that the Planning Inspectorate copied the information to the applicant a sufficient defence. I have seen no compelling evidence that information was deliberately concealed. The LPA set out putative reasons for refusal in their Appeal Statement, which is good practice, and to be expected where the appeal is against the failure to

- give notice within the prescribed period of a decision on an application for planning permission.
13. I considered the evidence provided by the appellant after the original submission of the appeal in the light of the Procedural Guidance: Planning Appeals – England 2023. I concluded that the later evidence did not alter the nature of the appeal proposal and accepted it but, in the interests of fairness, the opportunity to comment was given to the LPA and interested Parties and the opportunity for a response was given to the applicant.
  14. The failure to give notice within the prescribed period of a decision on an application for planning permission is regrettable. Whilst I acknowledge the considerable staffing pressures facing the LPA at the time, and recognise that the applicant submitted information during the application process which the LPA had to take into account, the delay was quite extensive. It would appear that there was communication between the Parties including an indication of the reason for delay, but from what I have seen this was relatively sparse. Whilst these matters amount to unreasonable behaviour on the part of the LPA, had the LPA taken the decision, it seems planning permission would have been refused. Accordingly, the appeal could not have been avoided.
  15. The LPA set out putative reasons for refusal in the Appeal Statement. I find these to be sufficiently substantiated and relevant to the planning merits of the case. It is not always necessary for expert or consultants' advice to be sought by either Party and I see no reason to suppose that professional judgement and experience was not properly exercised. In my judgement both Parties addressed the relevant information.
  16. I have concluded that the case Ref LW/11/0917/NP did not set a precedent for the current appeal because it pre-dated the current LP and has slightly different site conditions. Whilst equestrian use is acceptable in principle in the National Park under Policy SD24 of the LP, it would be remiss of the LPA not to consider the site-specific conditions whether or not some officers considered that the use would be likely to be compliant with planning policy. Whilst I came to a different conclusion in relation to the effect on the character and appearance of the area, suitability of the site location and access these are all matters that fall to be considered under Policy SD24 and the LPA was entitled to exercise its judgement and come to a different conclusion.
  17. During the appeal process any local planning authority would be expected to indicate what conditions might make a proposal acceptable and this does not undermine their case. There appears to have been correspondence between the LPA and the applicant during the appeal process about the merits of the proposal and the applicant clearly took the opportunity to submit additional information. This was not fruitful in terms of the applicant receiving a permission but demonstrates that the LPA did engage with the applicant.
  18. As set out above I find that the LPA demonstrated unreasonable behaviour by delaying a decision on the planning application; failing to properly explain this and by procedural short comings. However, the planning application would have been refused; the applicant would have had to respond to the arguments of the LPA; both Parties conflated different cases; and the applicant contributed to delays by submitting further evidence throughout the process.

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated by either Party.

*S Harley*

INSPECTOR