



Costs Decision

Inquiry held on 27-29 September 2022 and 18-21 April 2023

Site Visit made on 20 April 2023

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20/06/2023

Costs application in relation to Appeal Ref: APP/Y3615/C/19/3238790 Land at Highlands Farm, Portsmouth Road, Ripley GU23 6EY

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Hunt for a full award of costs against Guildford Borough Council (the LPA).
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land from a nil use to the mixed use of the Land for residential purposes, through the stationing of a park home and the use of the Land and buildings for non-agricultural storage, including but not limited to the storage of motor vehicles. Without planning permission, operational development consisting of the construction of two steel portal-framed buildings; the laying of concrete hardstanding; the construction of retaining walls; the construction of breeze block planters and the construction of tracks.
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Decision

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

The submissions for Mr R Hunt

2. The LPA's evidence indicates there was an agricultural use on the Land. Two previous officers at the LPA found there was an agricultural use on the Land and the evidence to this appeal indicates there was agricultural use on the Land at least in the year leading up to the issue of the notice. The appellant has been prejudiced by the exclusion of agriculture from the allegation in the notice as they are unable to run a ground (a) appeal. The LPA has been invited to withdraw the notice and reissue it, having been informed of the second bite provision. They have not done so. There has thus been wasted expense as a result of submitting the appeal.

The response by Guildford Borough Council

3. In the event the enforcement notice is quashed, it would be on the basis that the Inspector considers there was a material agricultural use at the time the notice was issued and it was not possible to amend the notice without injustice to the appellant. The LPA maintains the question of materiality was a matter of planning judgement. Even if the Inspector disagrees it was reasonably open to the LPA to come to the conclusion that they did on the evidence. There is room for planners to disagree on matters of judgement without being unreasonable.
4. The LPA's officers gave evidence on the agricultural use and why it was considered not to be material, forming their own judgement rather than relying

on those of others. Even if the notice is quashed, the LPA's behaviour has not been unreasonable.

Reasons

5. The Planning Practice Guidance (the Guidance) 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.
6. The principle of point of contention in the ground (b) appeal was the matter of whether there was a material agricultural use taking place on the Land at the date the notice was issued and therefore whether the alleged breach within the notice correctly reflected the position at the time. As can be seen from the appeal decision, I have found there was a material agricultural use forming part of a mixed use on the Land at the time the notice was issued. Furthermore, I have found that I am unable to correct the notice to add agriculture to the mix of uses stated on the notice, since doing so would result in injustice to the appellant.
7. I recognise that the appellant flagged this matter to the LPA both before and during the Inquiry, and invited it to withdraw the notice, bearing in mind the LPA's ability to reissue the notice under the 'second bite' provision of section 171B(4) of the 1990 Act. However, I find that the LPA's decision not to withdraw the notice, despite my finding that it was defective and incapable of correction, was not unreasonable. The LPA presented clear evidence to the Inquiry which set out why it took the view that the agricultural use was *de minimis*. Ultimately, both parties agreed during the course of the Inquiry that the materiality of the agricultural use was a matter of planning judgement. There was nothing irrational about the LPA's position on the matter. On that basis, I consider the LPA's behaviour was not unreasonable.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

J Whitfield

INSPECTOR