
Costs Decision

Site visit made on 29 July 2024

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2024

Costs application in relation to Appeal A Ref: APP/R3650/X/24/3343155 Land Opposite Junction of Glen Lea and 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 siting of a shipping container for use ancillary to agriculture and equestrian use.

Costs application in relation to Appeal B Ref: APP/R3650/W/23/3332813 Land at the junction opposite Glen Lea and 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 Ms 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 planning permission for the erection of a stable block (revision of WA/2023/00838).

Costs application in relation to Appeal C Ref: APP/R3650/W/23/3330264 Land Opposite Junction of Glen Lea and 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 Ms Angela Jenkins for a full award of costs against Waverley Borough Council.
- The appeal was against the refusal of the Council to grant, subject to conditions, planning permission for the erection of a stable block.

Decision

Appeals A and B

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

Appeal C

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

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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.

Appeal A

4. The basis of the appellant's costs application is firstly that the Council issued an illegal decision notice, because no site plan was attached to their decision.
5. The second point is that the Council have been inconsistent in their decision making for similar development, as they have come to a different decision in respect of an identical shipping container on another site.
6. The Council submits in rebuttal, that the legislation does not prescribe that a site plan must be attached to the refusal of a certificate of lawful development. Moreover, the appellant's evidence provides no direction to any regulation or legislation requiring such a plan to accompany their decision.
7. I have already considered the appellant's first point in my substantive decision and found that for the reasons set out there, the Council's decision notice to be valid.
8. Turning to consistency in decision making. Having considered the submitted evidence, including the officer reports for the examples provided, it is clear that the Council have assessed the applications by applying the relevant tests in the context of the particular facts of each application. Whilst I accept there may be some similarities between the development applied for, such decisions are fact sensitive.
9. It is apparent that the Council considered the limited submitted evidence to demonstrate how the shipping container would be moved within the site, the proposed nature of its use and establish whether planning permission would be required. This understandably resulted in different conclusions from some other applications with similar development that had been made.
10. For the above reasons I am satisfied that the decision to refuse the certificate issued by the Council was not invalid and the Council gave due consideration to the submitted evidence. Accordingly, I do not find unreasonable behaviour or inconsistency in the Council's decision making.

Appeals B and C

11. Appeals B and C both relate to the proposed erection of a stable block. The thrust of the appellant's case for both appeals, is that the Council could have granted planning permission for the proposed development and imposed appropriately worded conditions. These could have secured the required ecology information prior to commencement of the development, rather than refuse the proposal in the case of Appeal C, or fail to determine it in the case of Appeal B.
12. The appellant confirms that they would have submitted the additional ecology information in advance of starting works. Therefore, the Council's decisions resulted in unreasonable behaviour which has led the appellant to incur unnecessary and wasted expenses by having to appeal.
13. In short it is the Council's response that in the absence of sufficient evidence from the outset to properly assess the development in the context of the

habitat of Principal Importance and any protected species, granting permission would be contrary to Government guidance and established practice. They confirm that additional information was sought from the appellant during the application process to address their concerns. However, this was and still has not been provided.

14. It will be seen from my decision that I have taken a similar view to the Council, with regard to the lack of appropriate information to properly consider the effect of the proposal on this protected habitat and any protected species present within it. It follows that I find that the Council was entitled to refuse the applications and I cannot agree that their approach on these matters was unreasonable, or that an award of costs would be appropriate.

Conclusion

15. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, an award of costs against the Council is not justified.

Hilary Orr

INSPECTOR