



The Planning Inspectorate

Application for an award of appeal costs

You can use this form as a template if you wish to apply for costs in: -

- a written appeal
- an appeal going to a hearing or inquiry, but you wish to give advance notice of an application for costs
- an appeal which is withdrawn (or where the enforcement notice is withdrawn).

Notes to help you are in part D

A. Information about the claimant

Full name: Winchester City Council

Address: Winchester City Council, Colebrook Street, Winchester

Postcode: SO23 9LJ Your reference: 13/00205/USE

Daytime telephone No: 01962 848 480

Email address: klongley@winchester.gov.uk

Status (Appellant/Local Planning Authority/Interested Party):

Local Planning authority

Agent's Name (if applicable): Richard Stone

Agent's Address: 1 Sunnybank, Gravel hill, Southampton, Hampshire

Postcode: SO32 2JQ

Daytime telephone No: 01329 833 451

Email address: Janefoster45@hotmail.com

Date Received (Official use)

B. Information about the party being claimed against

Full name: Kevin Hall and Claire Slater

Address: Southfield nurseries, Dradfield lane, Southampton, Hants

Postcode: SO32 3QD

Status (Appellant/Local Planning Authority/Interested Party):

Appellant

C. Information about the appeal

Planning Inspectorate appeal reference number APP/L1765/C/22/3306531 & APP/L1765/C/22/3306532

Name of Local Planning Authority: Winchester City Council

Description of the development:

Without planning permission, the breach of condition 1 of the planning permission granted on appeal on 11 March 2014 under Council reference 13/01686/FUL (appeal reference APP/L1765/A/13/2207540) for the continued use of land to station a mobile home for a horticultural worker for a further three years ("the Planning Permission").

Condition 1 states:

its
the
"The mobile home hereby permitted shall be removed and the land restored to its former condition on or before the expiry of three years from the date of this decision in accordance with a scheme of works submitted to and approved by the Local Planning authority".

This condition has not been complied with in that the mobile home remains stationed on the land and is occupied for residential purposes and the land has not been restored to its former condition.

Address of the site: Land at Southfield Nursery also known as S&D Nurseries, Dradfield Lane, Soberton, Southampton, Hampshire, SO32 3QD

Notes for guidance on your costs application – please read before going ahead

Appellants, local planning authorities and anyone else involved with the appeal (the parties) are normally expected to cover their own expenses. But anyone involved in the appeal can ask the Secretary of State or appointed Inspector to order that one party pays some or all of another party's costs. Before agreeing to this, we will have to be sure that:

- the person applying was put to unnecessary or wasted expense in the appeal
- because of the unreasonable behaviour of the other party.

An award can only be made if both these tests are met.

Please write (in section E) how you think the other party has acted unreasonably and what expense this has caused you. Please note that only the unnecessary or wasted costs of the appeal itself can be recovered by an award.

Before going ahead with an application, your attention is drawn to The National Planning Practice Guidance web-based resource, which contains advice on the award of costs, in the Appeals section.

While there is no formal procedure or application form for making an application for costs you can use the template (below) to make an application for costs in writing.

The decision on your application will not go into the actual amount of costs involved – only the principle and, if an award is made, what the award is broadly for. So there is no need to state the actual amounts you are seeking. If an award is made, the parties will need to settle the amounts involved between them by negotiation; or, if that fails, by applying to the Senior Courts Costs Office for an independent decision on the matter.

When using the costs application form, to give advance notice of a costs application in a hearing or inquiry case, please send a copy of your completed application to the other party.

Please also note there are time limits for making a costs Application depending on the procedure for deciding the appeal. The Award of Costs Guidance provides relevant information.

D. Your costs application

Winchester City Council seeks a full award of costs against the appellant(s) in relation to the wasted time producing statements largely based on the potential justification for a new rural dwelling in the countryside based on an equestrian enterprise for which no objective evidence has been provided.

The Government online guidance for appeals outlines certain behaviours that may give rise to a procedural award against an appellant including;

Only supplying relevant information at appeal when it was requested, but not provided, at an earlier stage (Paragraph: 052 Reference ID: 16-052-20140306).

During the enforcement investigation prior to the notice being served the Council specifically questioned Kevin Hall as to the nature of the use on the land, including his landscape business (confirmed not to operate on the land) and the equestrian activity which he confirmed was for private use he also confirmed there was no commercial activity on the land. The evidence witnessed on site by the Council officer did not suggest a commercial equestrian activity, and instead appeared the horses were on the land for private use in association with the residential aspect. During this conversation he also advised they wanted to grow some crops and maybe get pigs, alluding to a potential agricultural use so as to justify the residential occupation. Given the assertion of no equestrian enterprise the Council did not include DM12, a relevant policy within the notice.

It appears to the Council that following this discussion and the pending enforcement notice an equestrian enterprise argument was formulated specifically to attempt to overcome policy objections. The appellant has submitted this information through their agent to argue the development is able to meet with policy requirements to overcome objections. This enterprise was referenced within the appeal application form which was the first the Council became aware of it, despite as already mentioned being directly advised no such operation existed. It appears the appellant has advised that no such

conversation occurred, notwithstanding the appellant was offered opportunities to submit an application and if they felt the equestrian operation justified could have mentioned this within correspondence. It appears to the Council that this argument has been put together purely to attempt to overcome policy objections. No solid evidence of such a use has been provided during the appeal process as of the date of this costs application and if it is provided at final comments it will be too late for the Council to consider.

The Council clearly afforded the appellants with ample opportunity to submit applications or information relating to the site prior to the service of an enforcement notice, if the appellant wished to put forward a case for an equestrian enterprise to justify the residential use of the land a planning application could have been submitted or they could have advised of the equestrian enterprise. If the information were provided to the Council at an earlier date prior to the enforcement notice being issued the matter could have been addressed more succinctly within the report for enforcement action at that stage.

The Government online guidance for appeals outlines certain behaviors that may give rise to a substantive award against an appellant including;

the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence (Paragraph: 053 Reference ID: 16-053-20140306).

The key argument that has been put forward by the appellant is that the residential use is required in connection with an equestrian enterprise so as to argue compliance with policies, specifically DM11 and DM12; however the appellants agent has used the wrong test that being the test for permanent dwellings as oppose to temporary. The Council would never consider a mobile home under the permanent dwelling test.

No financial records, invoices, numbers or details of horses have been provided. No evidence of a financially viable business has been provided, projections for future incomes have been submitted but this does not evidence an existing profitable business enough to clearly comply with the policies. No evidence of the appellant's occupation, or business or expertise within an equestrian field has been provided.

The Council considers this to be unreasonable behaviour with the appellants running substantive points with inadequate evidence. The appellant was advised in an email of the requirements within policy DM11 along with confirmation that from conversations held between the officer and the appellant it would appear that they were unable to comply. It follows that given the weight of planning policy was against the development, in keeping with a plan led system, robust arguments supported by comprehensive evidence would be needed should there be any prospect of success within the appeal. Instead they chose to pursue this avenue without providing any evidence to substantiate this. The Councils final comments section 2 outlines the lack of evidence submitted. If the appellants have such evidence, for instance that Claire Slater has various equestrian certifications, that a bank account is open specifically for the business, and that there is a 'thriving' business on the land it is unknown why they would not have

provided any evidence to support this. It is considered that such information should be readily available for an existing business, including current accounts, invoices, profitability, employees etc. The information submitted is a business projection starting from 2023, clearly not existing, and with no substantive basis for the numbers provided.

It would normally be expected that such detailed information would be part of a planning application, or at the very least provided to the Council prior to issuing the notice to ensure a full assessment is completed prior to issuing the notice, to enable consultation with an external consultant regarding the assessment for equestrian or other need and now there is no time for this.

The ground F and G appeals also appear to reference the equestrian enterprise, and would appear to be based on the equestrian enterprise being accepted as factual and an existing use of the land.

The appellant was afforded the opportunity to comply with the notice and voluntarily remedy the breach of planning control. They instead opted to undergo a costly appeal process. It is the Council's opinion that the appellant's behaviour in submitting this appeal and arguing the grounds in such a manner has not been exercised in a reasonable way and therefore the Council requests a full award of costs.

Please sign below

I understand that:

(a) use of this form is voluntary, and that the Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my application for an award of costs;

(b) the costs decision resulting from processing my application will be published on the Planning Portal and will include relevant names but not addresses.

By signing this form I am agreeing to the above use of the information I have provided.

I have completed all sections of the form and confirm that details are correct to the best of my knowledge. (Please note: signature is not necessary for electronic submissions)

Signature 

On behalf of Winchester City Council

Name (in capitals) Kate Longley

Date 30th November 2022

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our privacy notice.

See the link to the following page on GOV.UK

<https://www.gov.uk/government/publications/planning-inspectorateprivacy-notices>

Please note exceptions below but otherwise send this form and any supporting documents to:

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

For the attention of your appeal case officer

Or e-mail it to the email address as shown on the letter(s) you have received from your appeal case officer.

Exceptions - please note:

(1) Householder Appeals Service (HAS) & Commercial Appeals Service (CAS)

Please ensure your costs application – if you wish to make one - is with your appeal form when submitting a HAS or CAS appeal. If you are submitting your costs application via the Planning Casework Service on the Planning Portal please attach it to the grounds of appeal as a separate document

If using the postal service please send your completed HAS/CAS appeal form along with your costs application to the address quoted on the appeal form.

(2) Tree Preservation Order (TPO) appeals

In the case of a written TPO appeal any application for costs should normally be made at the same time as the appeal. E-mail to: environment.appeals@pins.gsi.gov.uk or send the form to:

The Planning Inspectorate
For the attention of the Environment Team
Room 3/25
Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1
6PN