

**Winchester City Council**

**Costs appeal follow up comments**

PINS reference: APP/L1765/C/22/3306531 & APP/L1765/C/22/3306532  
LPA reference: 13/00205/USE



## **Response to appellant's cost rebuttal**

- 1.1 This statement follows the Council's initial comments and provides follow up comments for the costs application.
- 1.2 In this statement the Council responds to points raised by the Appellant.
- 1.3 The information regarding the livery does not change the Council's stance although an additional policy would have been considered the development is still not considered to have met policy requirements and so there is no benefit of the Council choosing to determine no commercial activity on the land unless they were advised so by the owner. The Council maintain that the owner advised only their own horses were on the land and no commercial activity was occurring at the time of the initial visit.
- 1.4 The appellants rebuttal states;  
*"The appellant was unaware that an application could be made to meet the functional need of an equine business and had no idea that there was the possibility of submitting a planning application until an agent was employed to assist with appealing the Enforcement Notices."*

Given the time period afforded to the owner to submit an application previously and their lack of submission (whether specifically for equestrian use or not), the benefit of awaiting a planning application was considered to be inappropriate particularly given the policy objections outlined. The correspondence outlining the option to apply for planning permission has been provided already as part of the appeal process, specifically the Council wish to draw the inspectorates attention to the following extract taken from the options outlined to the appellant in an email sent 14<sup>th</sup> February 2022;

*"Apply for planning permission to retain the unauthorised aspects. Given the policy objections above, and our discussions that indicate you would not be able to provide the evidence required to overcome the objection it is my opinion that an application would not gain officer support. It is possible for a counsellor to call the application to committee but if it is dealt with at a delegated level by an officer it is likely to be refused. There is a right of appeal but as noted the previous appeals succeeded purely on the basis that an agricultural business was being established to afford time for growth. Submission of an application does not restrict the Council from issuing an enforcement notice although it will be taken into consideration."*

Clearly evidencing that the appellant was made aware of the option to apply for planning permission. This email also provided the RTPI link for agents and suggested should he require further information to contact one. The notice was then not served until the 26<sup>th</sup> August 2022, allowing a 6 month period for an application to be submitted if that were the appellant's intention.

- 1.5 The appellant chose to submit an application for a lawful development certificate reference 19/01770/LDC submitted 26<sup>th</sup> July 2019 in which he details the use of the land as 'family home'. This was refused. This further evidences that the appellant was aware of the option to submit an application and chose to submit a lawful development certificate in relation to the breach being outside of the enforcement timeframe and not in relation to any policy justification of the residential use of the land.
- 1.6 The Council disagree that the level of evidence submitted to support the application is sufficient for the reasons it has already outlined. There is an expectation of a certain

level of detail and information to be submitted alongside a planning application and the same level of detail is expected within a Ground A appeal. This will now be a matter for the inspectorate to determine.

- 1.7 The Council officer conducted a further visit in relation to a new enforcement case following up on new breaches that have come to light during the course of this appeal. It is not relevant to this appeal and is the subject of an additional enforcement investigation regarding additional changes that appear to be occurring on site. Although it should be noted that the Officer attempted to explain the right of entry and show her pass with the relevant legislation but instead the appellant chose to obstruct the right of entry.
- 1.8 The appellant's comments are correct the Council do on occasion opt to employ a consultant in such matters. It is up to the Council's discretion to employ such a consultant, in this instance there was a lack of information to assess so it did not justify such specialist input. In any case the turn-around time for response would not have been possible within the timeframe of this appeal. The Council have experience of dealing with such land agents and applications, and so with the low level detail submitted was able to assess the acceptability. This point made by the appellant further evidences that the Council have been unreasonably impacted. Should the appellant have used the normal route of submitting a planning application, entered into transparent discussions with the Council as to the true intention of the site or any of this information had been submitted prior during the extensive period of time the appellant has been on the land, then the Council could have considered its position prior to the service of the notice. However, the information has only come to light during the course of an appeal of which the time restrictions do not afford time to employ such a consultant even if the information submitted were to be considered to require such consultation.

## **2. Conclusion**

- 2.1 The inspector is respectfully requested to uphold the Council's application for an award of costs in the terms they deem fit.