
Costs Decision

Site visit made on 29 November 2016

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 January 2017

Costs application in relation to Appeal Ref: APP/P2114/W/16/3155274 Wellow Alpaca Stud, Main Road, Wellow, Isle of Wight PO41 0SZ

- 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 & Mrs Neil and Michelle Payne, West Wight Alpacas, for a full award of costs against Isle of Wight Council.
 - The appeal was against the grant subject to conditions of planning permission for the variation of conditions No 7 and 8 on P/01713/12 - TCP/30601/H to allow opening hours of 10:00 hours to 23:00 hours Monday to Sunday including Bank and Public Holidays and to allow mixed use of existing farm shop as farm shop and café.
-

Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises¹ that, irrespective of the outcome of the appeal, 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. It states² that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The same paragraph lists examples of such behaviour, two of which are cited by the appellant. These are the failure to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
3. I recognise that this appeal is made against conditions, rather than a refusal of planning permission, however, the same paragraph of the PPG confirms that imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions, can also amount to unreasonable behaviour.
4. The PPG³ explains that the six tests must all be satisfied and sets out key considerations in the test for necessity. These are that a condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

³ Paragraph: 004 Reference ID: 21a-004-20140306

- the development acceptable in planning terms and if a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.
5. Dealing firstly with Condition 1, the Council has explained that the reference to 'light refreshments' was the result of consultation with the appellant in which it was confirmed that it is not intended to deviate from the current menu offer or install larger cooking equipment. On the basis of this information the Council explains that it was considered entirely reasonable to carry forward the reference to 'light refreshments' from the previous Condition 7 of planning permission reference P/201713/12-TCP/30601/H.
 6. Notwithstanding that the email referred to by the Council dated 27 January 2016 also makes reference to cooking pizzas, this response does not explain why this aspect of the condition is necessary. The condition is therefore wider in its scope than is necessary.
 7. Furthermore, the Council's Statement of Case acknowledges that Condition 4, requiring details of the existing cooking equipment as well as restricting the installation of additional cooking facilities without the agreement of the Council, does provide a level of control over the scale of the café element of the business. Consequently, it is confirmed that should I consider it appropriate, the Council do not object to Condition 1 being varied in a manner which removes the reference to 'light refreshments'. Evidently, this aspect of the condition is not required to make the development acceptable in planning terms.
 8. I therefore find that the Council has failed to produce evidence to substantiate why the inclusion of 'light refreshments' is necessary within Condition 1. It will also be seen from my Decision, that by including 'light refreshments' in the manner set out, Condition 1 is unenforceable, imprecise and unreasonable.
 9. Turning to Condition 2, the Council is not bound to accept the recommendation of its officers, provided that evidence is produced to substantiate the reason for imposing the condition. In this regard, it is confirmed that before reaching its decision, Members had visited the site to view the relationship of the café and shop to neighbouring residential properties. The transcript provided of the Committee meeting demonstrates that the subsequent debate on the extent of the hours of operation was largely based on relevant material planning considerations relating to the effect of the development on living conditions.
 10. In this regard, it will be seen from my decision that I agree with the Council that there is sufficient reason to retain Condition 2 as existing. It follows therefore that I am satisfied that the Council has shown that it was able to substantiate its position on this matter.
 11. I have however, found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in respect of Condition 1 and that a partial award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Isle of Wight Council shall pay to Mr & Mrs Neil and Michelle Payne, West Wight

Alpacas, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting Condition 1.

13. The applicant is now invited to submit to Isle of Wight Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Richard S Jones

Inspector