
Costs Decision

Hearing held on 15 June 2017

Site visit made on 15 June 2017

by John Wilde C Eng MICE

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

Decision date: 27 June 2017

Costs application in relation to Appeal Ref: APP/J9497/W/17/31684680 Cuddyford Meadows, Rew Lane, Ashburton, Devon, TQ13 7EJ

- 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 Rachel Sykes for a full award of costs against Dartmoor National Park Authority.
 - The hearing was in connection with an appeal against the refusal of planning permission for the use of land for siting and residential use of a mobile home for a rural worker - 3 years.
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Decision

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

The submissions for Ms Rachel Sykes

2. The LPAs reasons for refusal related to the ability of the appellant to fully implement the proposals, with specific regard to the Glamping and meat production.
3. However, it was made clear to the LPA in an email dated 1 August 2016 that the Glamping use would be for 28 days a year only. Furthermore during the appeal process the LPA introduced a new line of argument to do with the provision of raised wooden platforms for the proposed yurts. There was no mention of platforms in the officer's report and the LPA should have asked for clarification on this matter from the appellant.
4. In terms of the meat production the LPAs own agricultural expert had stated that *I have no reason to doubt that the applicant intends to proceed with the new business as set out in the application*. In their appeal statement the LPA changed their stance on the meat production issue and effectively brought forward a new reason in respect of the packing of the meat, arguing that it was not clear if the structures on site would meet the necessary food hygiene regulations and therefore extra structures may be needed.
5. This is an entirely new point and should not have been raised at such a late stage in the process. The labour analysis upon which the application was determined identifies two hours per month spent on this activity. That should have been sufficient for the LPA to realise that the activity itself would not require the level of infrastructure that it now suggests might be necessary. This issue wasn't included in the officer's report and could be easily clarified.

6. The basis for the LPAs refusal of the application is therefore entirely flawed. They have subtly but significantly changed their justification for refusing the application by changing their approach to the Glamping and introducing a new line of argument with regard to meat packing. They have withdrawn 50% of the argument set out in the officer's report and with respect to the yurts, have relied on information that that has been shown to be inaccurate. As such they have prevented and delayed development which should clearly have been permitted.
7. There is a clear failure to produce evidence to substantiate the reason for refusal. Furthermore the LPA have neglected the chance to review their position throughout the appeal process in contravention of paragraph 187 of the National Planning Policy Framework (The Framework). This is all evidence of unreasonable behaviour.

The response by The Dartmoor National Park Authority

8. The Authority's appeal statement clearly sets out at paragraph 5.6.2 why it disputes the argument that the Glamping could be carried out for 28 days as permitted development. The email of 1 August does not clarify the position with respect to the siting and permanence of the platforms, showers and compost toilet and therefore the impact that this may have on the National Park. It is for the appellant to provide the evidence and information necessary to enable the authority to make a proper planning decision. If planning permission is required, then the basis of the business plan is called into question.
9. The Authority clarifies and expands on its concerns in paragraphs 5.6.3 – 5.6.5 of its statement. No new line of argument has been introduced. The revised labour analysis shows two hours per month meat packing for pigs and two hours for poultry. The fact that the meat processing and packaging will be undertaken by a professional butcher off-site has only been made clear in the costs application.
10. The appellant has provided insufficient information and in light of the highest level of landscape protection afforded to the national Park the Authority have not acted unreasonably in refusing the application. Therefore an award of costs is not justified.

Reasons

11. I have considered this application for costs in the light of the Government's Planning Practice Guidance (PPG). This advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority are required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour¹.
12. In relation to substantive behaviour they include *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material*

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

considerations and failure to produce evidence to substantiate each reason for refusal on appeal.

13. There was one reason for refusal which stated that insufficient evidence had been supplied to satisfy the Authority that all of the proposals would be implemented, leading to the conclusion that the functional need (required by policy DMD23) would not be satisfied and that the intention to proceed had not been adequately demonstrated.
14. The officer's report makes clear that at this stage the Authority were clear that the Glamping element of the enterprise would be carried out for only four weeks per year, but that the exact nature of the yurts and any accompanying structures such as showers were unknown and that therefore no conclusion could be made as to whether these would require planning permission.
15. The officer's report also notes that in the view of the Authority, no firm evidence had been provided as to the intention to proceed with the orders of hens and pigs. The conclusion is that given the uncertainty surrounding the Glamping and livestock elements of the enterprise, and also given the limited and restricted nature of the land within the appellant's ownership, planning permission should not be granted.

Livestock/meat production

16. However, the Authority's own Agricultural Appraisal carried out by Sheamus Machin, dated 31 August 2016, states that *I have no reason to doubt that the applicant intends to proceed with the new business as set out in the application*. So whilst the Authority perhaps correctly state that no firm evidence had been presented as to the intention to proceed with the orders of hens and pigs, this is completely contrary to the advice supplied by their own consultant. I also note that the Authority's consultant makes it clear that extra laying hens and breeding sows can be acquired *in a matter of days* and are *easy to source*.
17. In the Authority's Statement of case the issue of the orders for hens and pigs is not mentioned. At 5.6.7 they do however introduce the matter of preparation and packaging of the meat, a matter not previously mentioned. This issue fell away during the Hearing when the appellant made it clear that the meat would be processed and packaged off-site.
18. I accept that the information given by the appellant could have been in more detail. However, notwithstanding this, the Authority has given a reason for refusal contrary to advice from their consultant without fully substantiating it. They have then amplified this by introducing the matter of packaging and preparation of the meat, which to my mind differs in nature to the original reason relating to the intention to proceed. They have therefore acted unreasonably in this matter.

Yurts

19. In the officer's report with respect to yurts it is stated that it is not clear whether *they and associated structures such as toilets will require planning permission*. The Authority's statement of case points out that yurts are usually provided on platforms that are permanent rather than temporary structures, which could have a visual impact. To my mind this is not a new reason, as it serves to reinforce the opinion in the officer's report. The Authority has not

therefore effectively introduced a new reason for refusal. I also accept that they have had problems with similar applications at other sites in the past. Furthermore, the appendix to the appellant's Agricultural Appraisal is somewhat vague in asserting that *two structures such as yurts, camping pods, shepherd's huts or similar will be situated at the back of the field.*

20. I note that taking into account paragraph 187 of the Framework there is a duty on LPAs to look for solutions and seek to approve applications for sustainable development. However, there is also a duty on applicants to set out clearly their intentions in their planning applications. Overall, taking all of these factors into consideration and notwithstanding my findings on this matter in the accompanying appeal decision, I do not consider that the Authority have acted unreasonably in relation to the issue of Glamping.

Conclusion

21. I have found that the Authority has acted unreasonably in the matter of the livestock strand of the reason for refusal. However, as I have found that they did not act unreasonably on the issue of Glamping it follows that the Hearing would have been necessary and the Authority has not been responsible for delaying the implementation of the development. Notwithstanding this the Authority did effectively introduce an additional reason for refusal to which the appellant has had to respond. This in turn caused unnecessary expense to the appellant in pursuing that part of the appeal. I therefore conclude that an award of partial costs is justified

Costs Order

22. 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 The Dartmoor National Park Authority shall pay to Ms R Sykes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the Authority's reason for refusal relating to livestock/meat production; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to The Dartmoor National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Wilde

Inspector