The Planning Inspectorate

Costs Decision

Hearing Held on 23 July 2019

Site visit made on 23 July 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2019

Costs application in relation to Appeal Ref: APP/T3725/W/18/3215137
Faerie Tale Farm, Rouncil Lane, Kenilworth CV8 1NN

- 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 K. Vaidya on behalf of Faerie Tale Alpacas Limited for a full award of costs against Warwick District Council.
- The appeal was against the refusal of planning permission for retention of timber cabin for occupation by a rural worker.

Decision

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

The submissions

2. The costs application was submitted by the appellant in writing on the day of the hearing. The Council's response to the application was made orally.

3. In response, the appellant made some additional oral points and the details of these submissions are set out in the Annexe at the end of this decision.

Reasons

4. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Awards can be based on either procedural or substantive matters.

5. The officer report to planning committee concluded that due to the falling value of alpaca prices and the upper stocking level of the business, it could not be deemed to be financially sound over the long-term. Accordingly, planning permission was refused. However, the applicant states that detailed evidence from the applicant's consultant was not reported to the committee and that their decision was based on inaccurate information. They therefore consider that material evidence, which went to the heart of the case, was withheld from the planning committee.

6. The minutes from the planning committee suggest that an addendum was circulated at the meeting which provided a 'further response received from the agent, contesting the Council's Agricultural Consultant's latest comments'. Based on this, it would appear that the committee did indeed have sight of the rebuttal provided by the applicant. In light of this addendum, I am satisfied

that the committee did not have evidence withheld from them and that consequently, it had the necessary information to make a valid planning judgement. In this respect, I am satisfied that the Council have not behaved unreasonably.

7. Subsequent to that decision, the Council have provided detailed evidence for the appeal in support of their refusal. This includes the retention of their Agricultural Consultant who also attended the hearing. In combination with the Parish Council, they robustly defended their concerns and were able to suitably challenge the appellant on matters in relation to financial soundness. As a consequence, I am satisfied that their case has been well articulated.

8. Although I have found in favour of the appeal, based on the evidence before me and what was heard at the hearing, the views of the Council were not based on vague or generalised assertions and they have provided suitably substantiated professional judgements. Therefore, for the reasons identified above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated

Martin Chandler

INSPECTOR

Annexe: Submissions made orally at the Hearing

Council in response

1. The basis of the application is that insufficient information was given to the Planning Committee to make an informed judgement. It makes reference to material being presented which should have been submitted and put before the committee, but which was not put before the committee. This is the essence of the claim.
2. The facts in the application are entirely misleading and in that regard, we invite the Inspector to scrutinise the committee report dated 11 September 2018.
3. The appellant's contention is that the whole basis on which the committee refused the proposal was based on inaccurate information given by Mr Rhodes i.e the fall in stock prices.
4. Our contention is that that is wrong. In the committee report, you will find analysis that quotes Mr Rhodes and which makes reference to the fall in price. But fundamentally, the author of the report made the point that a financial analysis has taken place: "The submitted figures were not sufficient to justify that the business is financially sound and has a prospect of remaining so" (page 4).
5. So, we submit, that when Mr Hughes states that the key reasons for refusal were based on a comment in relation to a fall in stock prices – that is wrong.
6. The Committee had before it all key and relevant information to make a proper judgement on a planning balance. This included material from an independent consultant and material from the appellants.
7. In that regard, the committee minutes are a public document and we would invite consideration of these minutes, in which it is clearly stated that an addendum was circulated at the meeting which advised of a further response received from the agent contesting the agricultural consultant's latest comments.
8. The Council's point is this, even if every additional submission and late letters had not been put before committee, they had enough information to make a sound planning judgement.
9. We would also like to make clear that in the committee report, when reference is made to figures which were not sufficient to justify that the business is financially sound, that this referral is a reference to the Mr Rhodes's analysis on 2 years of accounts for years 2015/16 and 2016/17. One year showed no profit, the other showed modest profit.
10. Committee had accurate figures, the response from the consultant and the appellant's rebuttal and challenge to Mr Rhodes report.
11. In essence, there can be no case of unreasonable behaviour on the part of the Council because the committee had all of the information to make a planning judgement. We therefore invite you to dismiss the application for costs.

Appellant in response

12. In the report to committee, under the main heading 'assessment' and sub-heading, 'principle of development', a fair reading will show you so far as the financial test was concerned, Mr Rhodes advice was being quoted and relied upon. The conclusion on the financial test was based on this advice.

13. Mr Willis's letter to the Council dated 4 September 2018, which is provided in appendix 8 of the Statement of Case, was submitted on publication of the officer report. When you read this letter, Mr Willis fairly looked at the issue and flagged up a significant and material error in the report to committee.

14. The committee minutes provide a contemporary account and are provided at appendix 9 of Mr Willis's submission, Essentially, we then complain as set out at paragraph 10 of our application for costs as to what happened after committee.

15. Any fair reading would show that the committee was misled and not told the truth. Paragraph 15 of our costs application sets this out further. It identifies the sequence of events and we find that the Council behaved unreasonably.