



Costs Decision

Site visit made on 5 February 2020

by Beverley Wilders BA (Hons) PgDurt MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2020

Costs application in relation to Appeal Ref: APP/H0928/W/19/3239535 Nutwood, Melmerby, Cumbria CA10 1HF

- 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 & Ms Maurice & Young (Wanderlusts) for a full award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for change of use from agriculture to mixed use of agriculture and sustainable tourism, comprising grazing and the use for up to 3 No. horse-drawn caravans solely for the purpose of tourism.
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Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraphs 046 to 049 set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by a local planning authority includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; lack of co-operation with the other party; delay in providing information or other failure to adhere to deadlines and providing information that is shown to be manifestly inaccurate or untrue.
4. The case for the appellants is essentially that in determining the application, Councillors appeared to be unaware of all of the supporting information and that one Committee member who read out a statement appeared to be hard of hearing and to have pre-determined the case. The appellants also claim that the Council has behaved unreasonably in misrepresenting the proposal; being unwilling to negotiate; presenting evidence in a misleading manner; failing to carry out its administrative duties promptly and in opening an unsubstantiated enforcement case.
5. I have been provided with a copy of the minutes of the Planning Committee meeting at which the application was determined. However, these are very

- brief and do not provide any substantive details regarding the committee proceedings. The appellants have made reference to an audio recording of the meeting and to comments made during the meeting by Officers and Councillors. Allegations about one particular Councillor have been disputed by the Council and Officers advise that a legal advisor was present at the meeting and would have intervened had Councillors behaved inappropriately. Reference is also made to the fact that the appellants did not subsequently make any complaints to the Council about the conduct of committee members.
6. Though I note the concerns raised by the appellants, having considered the evidence before me, I am satisfied that members of the Planning Committee made a sound decision based on their judgement, something that they were entitled to do. Although the committee reached a different decision to me, this does not in itself mean that they behaved unreasonably and even if the allegations against a particular Councillor were founded, there is no evidence that the committee would have made a different decision.
 7. With regard to the conduct of the Council, although I note that the proposal appears to be different to that previously submitted and that the appellants appear to have sought to negotiate with the Council and to provide additional information where necessary, I do not consider that the evidence suggests that the Council materially misrepresented the proposal, were unwilling to negotiate where appropriate or has presented evidence in an intentionally misleading manner.
 8. Although I acknowledge that the Council failed to emphasise the changes that have been made to the proposal in response to previous concerns and were reluctant to enter into ongoing dialogue with the appellants, I do not consider that this amounted to unreasonable behaviour under the circumstances. It is clear from the evidence that Council Officers have an in principle objection to the proposal and consequently did not consider that further amendment or negotiation would result in resolution and approval of the proposal. Although I disagree with the Council, I consider that it has produced sufficient evidence to substantiate the reasons for refusal and to demonstrate that further discussions are unlikely to have resulted in an Officer recommendation of approval to committee or that there is evidence to suggest that the committee would have made a different decision even if further discussions had taken place.
 9. Whilst there was a delay in the Council providing the appeal questionnaire and copies, this was not significant and does not appear to have resulted in the appellants incurring unnecessary or wasted expense. The allegations made in respect of enforcement action undertaken by the Council though noted, are not directly relevant to the appeal before me.
 10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is not justified.

Beverley Wilders

INSPECTOR