

Costs Decision

Hearing (Virtual) held on 8 September 2021

Site Visit made on 9 September 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/21/3270044 Land at Stokes Marsh Lane, Coulston, Wiltshire BA13 4NZ

- 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 M Elliott for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the siting of a temporary rural workers dwelling and associated works including erection of kennels and haystore and formation of hardsurface for access and parking.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal the Planning Practice Guidance (PPG) states that an award of costs may be made where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be procedural, or it can relate to the substance of the matters under consideration as part of the appeal. Examples of unreasonable behaviour by Local Planning Authorities are set out in Paragraph 047 and 049 of the PPG.
3. In the appellant's view, the Council's unreasonableness is based on four grounds. Firstly, it has misinterpreted its own policy and that of the 2021 Framework in terms of housing exceptions in rural areas.
4. The Council has clearly set out in its officer's report and statement of case the policy position in respect of the locational requirements for rural housing and businesses.
5. Despite the different approach in which I have viewed the two elements that make up the enterprise, the Council, through its officer's report and statement of case provides justification why the breeding/training aspect of the business does not require a rural location, as the appellant had previously operated successfully from a nearby market town. During that time, the appellant was still able to train and exercise his dogs elsewhere while he resided in an urban setting. Thus, in the Council's view, a rural location was not deemed essential up until that point, and equally would not be required in the case of the appeal site.

6. The appellant states that the Council further misinterpreted their policy by applying the “full time worker” rather than “essential need” test. On that point, I note that Core Policy 48 of the Core Strategy states that “proposals for accommodation to meet the needs of employment essential to the countryside should be supported by functional and financial evidence”. In assessing this, the Council’s reasons for the policy breach are more simplistic and appear to rely on the shortfall of working days associated with the Alpaca element, rather than matters relating to animal husbandry. Nevertheless, their position has drawn from the supporting functional evidence which is a requirement of the development plan policy and in this regard, I am satisfied that the Council understood its own policy.
7. Taking the above factors into account, the Council has shown understanding of the various policy exceptions and tests, while also providing reasonable justification to substantiate its concerns.
8. Although the Council’s own agricultural advisers (APA Consulting Ltd) refer to there being an essential need for a person to be on hand at most times, its officers were not bound by this advice. They proceeded to take a different view in their report regarding the principle of the dog breeding/training element at the application site in accordance with the policy requirements of the development plan. This was not an unreasonable approach to take; therefore, I do not accept the appellant’s second ground.
9. The appellant’s third ground contends that the Council has been inconsistent in determining similar decisions, referring to the Hullavington case recently granted temporary planning permission¹. However, that decision related to dog boarding, as opposed to breeding and training in the case of the appeal scheme. It was also determined in September 2021, so the Council would not have been aware of it at the time of determining the development at the appeal site. As such the cases are not directly comparable and it cannot be argued that the Council has been inconsistent and therefore unreasonable given the differences outlined.
10. In relation to the appellant’s final ground, I acknowledge that the Council did not engage with the applicant in requesting further information on the proposals noise and highway safety effects. Yet, based on the evidence before me it has not been demonstrated that by addressing those matters in their submissions that there was any wasted expense in doing so. In any event, given the Council’s objections to the scheme, it would appear unlikely that they would have reached a different decision and therefore that an appeal would have been avoided.
11. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified

RE Jones

INSPECTOR

¹ Planning Permission Ref: 20/03181/FUL