
Costs Decision

Site visit made on 7 February 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 07th March 2022

Costs application in relation to Appeal Ref: APP/J1535/X/21/3279706 London Alpacas, Mount Road, Theydon Mount, Epping Forest, CM16 7PL

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S. Van Oorschot of Mr S. Van Oorschot & Ms V. Tran, London Alpaca Farm for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of land for the purposes of agriculture (the keeping and breeding of alpacas) including alpaca experiences.
-

Decision

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

Procedural matter

2. The applicants' application for costs is marked as 'draft' and the Council refers to its intention to submit written representations in its rebuttal. Save for the applicants' response to the Council's rebuttal, which does not clarify any change in the status of their application, I have not received any further correspondence regarding the costs claim. Consequently, I have determined the application on the basis of the information which has been submitted.

Reasons

3. The Planning Practice Guidance (PPG) advises, amongst other things, that 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.
4. The PPG states that local planning authorities are at risk of an award of costs if they do not co-operate with the parties, they prevent or delay development which should clearly be permitted, they make inaccurate assertions about a proposal's impact or they act contrary to established caselaw. The PPG also says that planning authorities should review their case promptly following the lodging of an appeal.
5. The applicants are critical of the Council which they say could have sought clarification and additional information from them. Also, the appellants say that there were no updates from the Council following the submission of their application.

6. In response to the claim for costs the Council argues that it is made clear on its website that it does not provide updates on ongoing planning applications. Nevertheless, this does not prevent the Council from seeking further information if it needed it and it is generally the case that applicants can follow the progress of their applications through self-service online. To that extent I do not find that the Council failed to co-operate with the applicants.
7. My decision makes it clear that I agree with the Council that an LDC should not be granted. It follows that the Council did not unreasonably prevent or delay the grant of a certificate for an existing use.
8. The applicants consider that the Council arbitrarily increased the number of alpaca experiences when it considered the application for the LDC, which resulted in it adopting an inflated view of the income arising from the alpaca experiences. The applicants argue that the Council did not supply evidence in support of its conclusions in this regard.
9. In its delegated report the Council refers to Facebook and the London Alpacas website in addition to the covering letter dated 29 March 2021 (the March 2021 letter) which the applicants submitted with their application. The Council refers to the alpaca experiences taking place up to five times a week, which is more frequently than the three to four times per week set out in the March 2021 letter. However, the Council also states in its report that during peak season there could be three sessions a day, five days a week. This assumption is much greater than indicated in the information provided by the appellant and leads to the Council assuming a much higher yield from the alpaca experiences compared with other aspects of the business.
10. In its appeal statement the Council states that it was not clear from the information provided by the applicants whether the alpaca experiences were taking place two to five days per week or two to five sessions per day. However, I do not find the information provided by the applicants in the March 2021 letter lacked clarity. I have not been provided with any information from the applicants' social media pages or website but it is conceivable that the Council relied on information from those sources. On this basis it has not been shown that the Council acted unreasonably in making inaccurate assertions about the impact of the development.
11. Even if it had been shown that the Council inflated the number of alpaca experiences it will be seen from my decision that I have relied on the information before me in the form of the March 2021 letter. My conclusion was that the Council's decision to refuse the application for an LDC was well-founded. Therefore, the delay and costs associated with making the appeal could not have been avoided.
12. The applicants referred to case law (the Millington case and Burdle)¹ in their application submissions and the Council refers to the Millington case in its delegated report.
13. The Council draws its own conclusions about the applicability of the Millington case to the application for the LDC and provides justification as to why it considers the Millington case was not relevant. The Council does not refer specifically to Burdle in its submissions, but it does put forward arguments in

¹ Millington v SSETR & Shrewsbury and Atcham BC (2000) JPL 297 and Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207

relation to the planning unit and incidental and ancillary uses which were the principal issues in Burdle. Drawing these points together I do not find that the Council acted contrary to established caselaw, albeit that it reached a different conclusion to the applicants on the applicability of it to the appeal.

14. There is no evidence that the Council failed to review its decision when the appeal was submitted and in the light of my decision, which accords with the Council's determination, there was no reason for the Council to decide not to engage with the appeal process and invite a new application.
15. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Sarah Dyer

Inspector