



Costs Decision

Hearing Held on 24 January 2023

Site visit made on 25 January 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

**Costs application in relation to Appeal A Ref: APP/N1730/C/21/3283185
and Appeal B Ref: APP/N1730/C/21/3283186**

Land Adjacent Five Acres, Broad Oak, Odiham, Hook, Hampshire

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hart District Council for a full award of costs against Mrs Kim Buckland (Appeal A) and Mr Kevin Buckland (Appeal B) .
 - The hearing was in connection with an appeal against an enforcement notice alleging the change of use of the land to use for the stationing of a wooden mobile home structure, used for permanent residential accommodation and the associated operational development.
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Decision

1. The application for an award of costs for Appeals A and B are refused.

Submissions

For the Council – Summary of application

2. The costs application was submitted in writing at the Hearing. In summary, the Council claims that the appellants acted unreasonably in terms of both substantive and procedural matters in dealing with these appeals.

Substantive claims

3. On substantive grounds, in summary, the Council claim that:
 - a) The onus of proof lies with the appellants concerning their appeal, and the appellants have failed to provide any substantive supporting evidence to clarify any of the factual matters at hand (for example, their land ownership, rented land, numbers of alpacas, business accounts etc). Thus, they have failed to substantiate the functional need for an agricultural dwelling in this location or any need which is requisite for the purposes of agriculture in the locality.
 - b) They have failed to produce any evidence that their occupation is a bona fide business venture, which leads the Council to question whether the operation is sustainable or viable.

- c) The breach of planning control undertaken is a deliberate breach. The appellants took steps to prepare to occupy the land before they began keeping alpacas as demonstrated by the planning history of the site.
- d) The appellants appeal on ground (f) but advance no rational or planning reasons to explain why steps required by the notice are excessive. Similarly, the appellants provide no rational explanation why the period for compliance is unreasonable nor do they suggest an alternative period which would be appropriate.

Procedural claims

4. On procedural grounds, in summary, the Council claim that:

- a) The appellants failed to complete a timely statement of common ground (SOCG) nor any list of suggested conditions.

For the Appellants

Summary of substantive response

- 5. The response was set out orally at the Hearing and the application is resisted. The grounds of appeal have been covered at the Hearing. How this was explained is not new evidence. The Council had sight of the appellants' business plan. This explained how the alpacas were looked after and why line of sight is required. The Council had not sought specialist agricultural advice on the business plan and relied on the enforcement officer with no agricultural experience, to determine whether this is a viable business.
- 6. It is reasonable for the appellants to purchase agricultural land to set up an agricultural business. The appellants were in communication throughout with Hart District Council, who were advised that there has been substantial investment to date and that a revised application would be forthcoming addressing the previous reasons for refusal. However, this was delayed due to the Covid-19 pandemic and national lock downs, and it is reasonable to avoid contact with people during this time, as per government restrictions. However, the enforcement notice was issued without any prior communication with the appellants which is unreasonable of the Council.

Summary of procedural response

- 7. The appellants' agent tried to negotiate matters on the SOCG. However, the Officer did not like what was written in the SOCG and deleted a lot of this. The appellants suggested a deadline by which if nothing further was received from the Council then they would submit their draft. In any case, the failure to submit the SOCG and suggested list of conditions has not prejudiced the Hearing.
- 8. There were sound reasons for delays, which the Planning Inspectorate are aware of, including paternity leave for the appellants' representative. There is no unreasonable behaviour for a partial or full award of costs.

Reasons

- 9. The Planning Practice Guidance advises 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.

Substantive grounds

10. The planning history shows that a number of applications were received for a dwelling at the appeal site prior to alpacas being introduced onto the land. However, the appellants state that they purchased the land to set up an agricultural business, and that they had informed the Council that they were seeking to submit a revised planning application to overcome the earlier refusal, but this was delayed due to Covid-19 restrictions. In light of the government restrictions which occurred during this time, I am satisfied that the appellants have not acted unreasonably by failing to submit an application in a timely manner.
11. It was for the appellants to consider on which grounds to appeal. For the appeal on ground (a), it will be seen from my decision that I consider that an essential need for a rural worker to live permanently at Broad Oak Alpaca Farm has not been satisfactorily demonstrated. Nevertheless, the appellants' appeal is supported by a number of documents including the Design and Planning Statement, and Agricultural Appraisal, which seeks to set out the business plan for Broad Oak Alpaca Farm as well as the welfare needs for the alpacas. Therefore, the appellants' appeal is not unsubstantiated, and the appellants have not acted unreasonably in this regard.
12. Furthermore, it is not uncommon for appeals on grounds (f) and (g) to be brief, and I note that the appellants have provided a reasonable explanation for both of these in their appeal statements. Indeed, it will be seen in my decisions that corrections and a variation have been made to get the notice in order and to extend the period of compliance. I do not therefore consider the appellants have behaved unreasonably in this regard.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Guidance, has not been demonstrated in respect of the claim on substantive grounds.

Procedural grounds

14. The pre-hearing note requested the submission of a SOCG and a list of suggested conditions in advance of the Hearing. In response to this the appellants agent has outlined the difficulties he has encountered in preparing these documents, and I note that neither party was able to reach any agreement on these matters in advance of the Hearing. Whilst the submission of such documents would have assisted the Hearing and my deliberation, the Hearing was not delayed as a result of these missing documents, nor was there any need for any additional adjournments. As such, the lack of a SOCG and a list of conditions have not resulted in any unnecessary wasted expense.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the Council's claim for costs for Appeals A and B fails.

R Satheesan

INSPECTOR