Costs Decision

Hearing held on 5 March 2024

Site visit made on 6 March 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH APRIL 2024

Costs application in relation to Appeal A Ref: APP/L1765/C/22/3306531 & Appeal B Ref: APP/L1765/C/22/3306532
Land at Southfield Nursery also known as S & D Nurseries, Dradfield Lane, Soberton, Southampton, Hampshire SO32 3QD

- 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 Winchester City Council for a full award of costs against Mr Kevin Hall and Claire Slater.
- The breach of planning control as alleged in the notice is without planning permission the breach of condition 1 of the planning permission granted on appeal on 11 March 2014 under Council reference 13/01686/FUL (appeal reference APP/L1765/A/13/2207540) for the continued use of land to station a mobile home for a horticultural worker for a further three years ("the Planning Permission"). Condition 1 states:
  "The mobile home hereby permitted shall be removed and the land restored to its former condition on or before the expiry of three years from the date of this decision in accordance with a scheme of works submitted to and approved by the Local Planning authority".
  This condition has not been complied with in that the mobile home remains stationed on the land and is occupied for residential purposes and the land has not been restored to its former condition.

Decision

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

The submissions for Winchester City Council

2. The costs application was submitted in writing. The applicant indicates that Mr Hall and Ms Slater did not supply relevant information on the commercial equestrian activities set out in their appeal. It is suggested that these activities were not occurring during the enforcement investigation and have only been raised at appeal. Furthermore, no solid evidence of the use was provided by the date of the cost's application and any submissions submitted at final comments stage did not leave sufficient time for the Council to respond. If the information was provided to the Council at an earlier date, the matter could have been addressed more succinctly within the report for enforcement action.

3. The applicant, therefore, considers the appellants' unreasonable behaviour gives rise to a procedural award of costs because the appellant only supplied relevant information at appeal when it was requested, but it was not provided at an earlier application stage. They claim the development is clearly not in accordance with the development plan, and no other material considerations have been advanced to indicate otherwise.

4. No additional points were made orally during the appeal hearing.

The response by Mr Kevin Hall and Ms Claire Slater

5. A response was made in writing. The appellants maintain that they cooperated with the Enforcement Officer during the investigation. They claim that Mr Hall showed the Council the stables, equine facilities and horses that formed the enterprise. They have also provided an appraisal of the enterprise with accounts, a business plan and man hours as part of the appeal submissions. It is claimed the information was available to the Council prior to the application for costs being made, and if the Council had carried out their investigations correctly, it would be evident there was a commercial equine business taking place.

6. It is also claimed the appellants were unaware that an application could be made to meet the functional need of an equine business until their agent was employed. They also consider the proposed residential use of the mobile home in connection with the equine activity is a development that is in accordance with relevant development plan policies and is supported by the National Planning Policy Framework 2023 (the Framework). At the hearing, the only additional point raised was that the Council had given misleading reasons for the late submission of the cost's rebuttal.

Reasons

7. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.

8. I appreciate that the Council were frustrated at the lack of cooperation and the breakdown in communication during the enforcement investigation. However, it is not unreasonable for the appellant to be unaware that an application could be made to meet the functional need of an equine business until their agent was employed. Also, as the appellant did not submit a planning application prior to the enforcement notice being served, information regarding the equestrian activities could not have been requested or provided at an earlier application stage.

9. From the evidence I have before me, the appellants submitted details regarding the equestrian activities and the ground (a) appeal in a timely manner. The Council had sufficient time to consider and respond to the information submitted by the appellant during the appeal process. Further to this, the Council did consider and objected to the retention of the mobile home in connection with the commercial equestrian activities. Consequently, even if this information was provided, it is unlikely to have prevented the enforcement notice from being served and the subsequent appeal from being made. Therefore, the appellants have not acted unreasonably in this regard, and no wasted expense has been incurred as part of the appeal process.

10. The ground (a) appeal was for a rural enterprise use, and the need for a rural worker in connection with that use. Although there was dispute over the scale of the activities and the need for the mobile home in connection with a rural enterprise, this is a subjective planning matter. Despite the ground (a) appeal not being determined on the accompanying appeal decision, there are clearly development plan policies, supported by the Framework, which allow for this type of development in rural locations. As such, I do not consider this to be a development that is clearly not in accordance with the development plan and had no reasonable prospect of succeeding.

11. I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application is refused, and an award of costs is not warranted.

M. P. Howell

INSPECTOR