



Costs Decision

Hearing held on 25 June 2024

Site visit made on 25 June 2024

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd July 2024

Costs application in relation to Appeal Ref: APP/L1765/W/24/3340652 Myndful Mushrooms, Jolly Moon, Land North of Bridge Bungalow, Lower Road, Drove Links Road, South Wonston, Hampshire SO21 3HR

- 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 & Mrs J Wright for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for a Temporary rural workers dwelling, agricultural building, forest school and ancillary works.
-

Decision

1. The application for an award of costs is refused. However, a partial award of costs is granted in the terms set out below.

Reasons

2. 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.
3. Paragraph 49 of the PPG makes clear that local planning authorities are at risk of a substantive award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. The applicants' costs application is on this basis.
4. In its Committee Report, the Council acknowledges that there is potential for a forest school use to be in accordance with Policy MTRA4. However, it states '*this would be subject to a thorough sequential analysis of suitable and available sites, an assessment of the sustainability of the location, and of traffic, landscape and ecological impacts*'. The applicants did not provide this analysis. Based on the absence of that information, the Council concluded that it had not been demonstrated that the forest school would be an acceptable use in that location.
5. However, as set out in my decision, none of the text relating to Policy MTRA4 requires a sequential test. There appears to be agreement from the Council in this regard as it signed the statement of common ground submitted with the appeal, which stated that Policy MTRA4 does not require a sequential test to be

- undertaken. Nonetheless, the Council maintained at the hearing that, whilst not a specific policy requirement, a sequential test should form part of the evidence in support of the application.
6. It is unclear why such an approach is essential, given that MTRA4 requires an assessment as to whether that development has an operational need to be located within the countryside. Therefore, whilst a sequential analysis may be helpful to the Council and may ultimately help support the applicants' case, in my view, it is unreasonable to base a decision on the absence of its provision, and maintain this stance at a hearing, given that it is not a policy requirement.
 7. At the hearing the Council referenced the forest school in the context of the financial test required by Policy DM11, noting the need to consider the scheme as a whole. The Council was offered the opportunity to withdraw this statement however it maintained this stance which appeared to be different to the approach at the application stage. This is an incorrect interpretation of Policy DM11 which relates solely to the consideration of the agricultural enterprise. This amounts to unreasonable behaviour.
 8. There is limited discussion of the Rural Workers Dwelling Appraisal provided by the applicants within the body of the Council's Committee Report. However, to my mind, this is not convincing evidence that the Council and its Members have not taken this into account in coming to a decision. Indeed, there is reference within the Committee Report to the financial information provided within the Appraisal. Whilst the applicants offered to pay for an independent agricultural consultant for the Council, the Council chose not to pursue this approach. Although I acknowledge that such an approach is relatively common, there is no legal or policy requirement for the Council to engage their own consultants. This is not evidence of unreasonable behaviour.
 9. The production of mushrooms, the majority of which are used for producing a tincture, is, as the applicants contend, a relatively unusual enterprise of which there are few examples. Whilst I concluded that the enterprise was agricultural, the Council Members came to the opposite view, based on the evidence before them, as they were entitled to do so. They also came to a different view to the applicants with regard to the effect of the dome on the character and appearance of the area, as did I. This is not evidence of unreasonable behaviour. Whilst the applicants have provided details of case law¹ at appeal, I am satisfied that this has been considered by the Council, not least due to the references in the Council's statement. This is not, therefore, convincing evidence of unreasonable behaviour.
 10. The director of an established mushroom enterprise, similar to that of the applicants, attended the hearing and answered questions with regard to the operation of such an enterprise, primarily in terms of demonstrating a functional need for a worker to be available at all times. The Council did not contest much of what was said. Nonetheless, the Council's stance was that the enterprise was an industrial process and did not have an operational need to be located within the countryside. Given that this aspect of the discussion was not in relation to whether the use needed to be located within the countryside, I am satisfied that the Council's lack of interaction on this point did not amount to unreasonable behaviour.

¹ Millington v SSETR & Shrewsbury and Atcham BC (2000) JPL 297 (the Millington case).

11. The applicants argued at the hearing that their agricultural consultant need not have attended due to the lack of input from the Council at the hearing with regard to functional and financial justification. However, the consultant answered several of my questions and I found his contribution useful in allowing me to come to a decision.
12. The applicants consider that reasons for refusal 4, 5 and 6 could be dealt with by planning condition. However, there is nothing before me to suggest that the Council acted unreasonably in terms of its reasons for refusal in relation to nutrient neutrality, biodiversity or highway safety. Indeed, my assessment in relation to biodiversity was that this could not be dealt with by condition. Imposing these reasons for refusal does not amount to unreasonable behaviour on behalf of the Council.

Conclusion

13. For the above reasons I do not find that the application for a full award of costs is justified. Nevertheless, I find that some unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is therefore justified, relating solely to the cost of responding to the Council's first reason for refusal relating to the assessment of the forest school against Policy MTRA4. The applicant has thus been faced with the unnecessary expense in defending that matter at appeal.
14. Whilst the Council intimated at the hearing that the financial test was applicable to the forest school, this approach does not appear to have been taken earlier in the appeal process or as part of the consideration at the application. Whilst this is unreasonable behaviour, I am not convinced that this has led to any unnecessary or wasted expense at appeal as described in the PPG.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Winchester City Council shall pay to Mr & Mrs J Wright, the costs of the appeal proceedings described in the header of this decision limited to those costs incurred in responding to the Council's first reason for refusal relating to the appropriateness of the development in the countryside, specifically with regard to the forest school, with such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Winchester City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Martinson

INSPECTOR