The Planning Inspectorate

Costs Decision

Hearing held on 9 July 2024

Site visit made on [ ]

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2024

Costs application in relation to Appeal Ref: APP/R3705/W/24/3341147
Lucky Tails Alpaca Farm, Dexter Lane, Hurley CV9 2JG

- 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 Ms S Booth, Lucky Tails Alpaca Farm for a full award of costs against North Warwickshire Borough Council.
- The appeal was against the refusal of planning permission for the siting of a timber cabin to replace mobile home to provide rural workers accommodation.

Decision

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

The submissions for Ms S Booth

2. The costs application was made orally at the hearing. It is made on substantive grounds and the basis of the claim is two-fold with respect to the approach that North Warwickshire Borough Council (NWBC) has taken in determining the planning application and in defending the appeal. The application is made for a full award, or alternatively a partial award of costs.

3. In summary, it is claimed that the Council has prevented or delayed development which should have been permitted having regard to the development plan, national policy and other material considerations and has failed to produce evidence to substantiate the reasons for refusal on appeal.

4. It is asserted that, given the agreement between the parties, the crux of the Council's case is the absence of very special circumstances. The Council make three assertions, that the site is overgrazed, birthing periods for alpacas can be focused and there is alternative accommodation. In defending the decision, the Council relied heavily upon responses to the proposal from their agricultural advisor (advisor). He was not at the hearing. It is also alleged that the advisor had not been to the appeal site, nor carried out a detailed assessment compared to the applicant's agricultural advisor, considered only the agricultural elements of the proposal and not the whole business and relied greatly on the previous appeal decision[1], even though the current situation has changed.

5. The applicant suggests that overgrazing could only relate to the financial basis of the business, which the Council find acceptable. The Council also do not dispute the birthing requirements of alpacas is aspirational and alternative accommodation only becomes relevant if the birthing issue is not satisfied and,

[1] Appeal Ref: APP/R3705/W/20/3259888

in any event, the sight and sound evidence is clear. In the absence of a defence by anyone other than the officer who recommended approval of the proposal, it is unreasonable for the Council to have continued to defend the appeal, particularly as that fact would have been known to the Council some time ago and therefore the hearing could have been avoided.

The response by North Warwickshire Borough Council

6. The response was made orally at the hearing.

7. The Council set out that when members of the Planning and Development Board (the Board) determined the application, they were fully aware of the history of the site. They were also aware of the specific issues relating to animal husbandry, security, financial and functional considerations. They also considered whether there was sufficient movement since the previous refused application[2] and subsequent dismissed appeal. A balanced decision was made that there wasn't sufficient movement since these decisions and that the proposal did not accord with the development plan.

8. The Council explained that being located in the Green Belt is a high hurdle to jump in terms of the test of very special circumstances. The Board were aware of the sight and sound factors as indicated within paragraph 84a) of the National Planning Policy Framework (the Framework). The Board also gave weight to the views of its advisor, who has significant years of experience in agricultural dwellings and was involved in the previous appeal. He knows the site very well and made his recommendations based on the significant knowledge he has.

9. It was stated at the hearing that the Council's submissions evidence the loss of openness and visual intrusion, which is part of the planning balance, and the previous appeal decision is a significant material consideration. The Board attributed different weight to the Officer when considering the application, which it is perfectly entitled to do.

10. The Council set out its reasons for the absence of its advisor. Evidence has been provided in written form and orally which sets out the advisors concerns in relation to over-grazing, birthing period processes and alternative accommodation. The reasons for refusal set out in its decision indicate that it has taken a balanced approach with regard to very special circumstances.

The response by Ms S Booth

11. The response was made orally at the hearing and the following additional points were made.

12. The applicant notes the points made about openness and the extent to which it has been agreed it is inappropriate development does not mean planning permission cannot be granted. Nor that in essence this boils down to very special circumstances. The point was made that the committee is entitled to apply different weight, but there is a threshold of reasonableness. It is not the reasonableness that the Officer defends the Council's view that the applicant attacks, it is the reasonableness of the Council's continued stance despite the evidence in this matter. Although the Officer says what he does about the

[2] LPA Ref: PAP/2019/0490

views of the Board, they are not here. Whatever the reason for a lack of alternative agricultural consultant, there still isn't one.

13. The Council points to the high hurdle in respect of very special circumstances, a hurdle the Officer says is met, the applicant's planning consultant says is met, the applicant's agricultural consultant says is met and the lay applicant says is met. That is why the Council's stance is unreasonable.

Reasons

14. 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.

15. The reasons for refusal set out in the Council's decision notice are clearly articulated and state the policies of the development plan and paragraphs of the Framework that the proposal would be in conflict with. It is clear that the Council felt that there was insufficient evidence or information to demonstrate the essential need for permanent occupation of the site or that very special circumstances could be demonstrated. Therefore, a key issue is whether the Council have provided sufficient evidence to substantiate their reasons for refusal at appeal.

16. The Council's hearing statement explains the reasons for refusal in more detail. It sets out that in considering how the proposal would cause harm to the Green Belt, consideration was given to how the appeal scheme would affect the openness of the Green Belt both spatially and visually. This was discussed further at the hearing. The Council's assessment of whether very special circumstances exist is covered in Section Four c) and d) of the hearing statement. Further reasoning was provided verbally at the hearing to address the arguments advanced by the applicant.

17. Even if the Council's advisor had not visited the site, I cannot be certain that he did not see the site from the public domain. Regardless, a detailed account of the business was provided in the applicant's planning application. The advisor had also represented the Council at the previous appeal hearing so was familiar with the site and the operation of the enterprise.

18. The initial written letters of advice from the advisor provided an assessment of the proposal in relation to the essential need for a rural workers dwelling. The advice was updated in response to each additional appraisal submitted on behalf of the applicant by the their consultant, Reading Agricultural Consultants. Although the responses are not as detailed as those appraisals, they clearly summarised the proposal, took into account the increase in the size of the herd and other animals and activities at the site since the previous appeal and provided a reasoned opinion.

19. I agree that the Council's advisor attributed considerable weight to the findings of the Inspector in the previous appeal. However, the applicant acknowledged in the Statement of Common Ground that the previous appeal was a material consideration and the appellant's consultant similarly relied on many of the findings of the previous Inspector. The weight to be applied to that appeal decision, as I have also set out in my decision, is a matter of judgement.

20. As an agricultural specialist, the advisor was entitled to comment on over-grazing matters when assessing the proposal, particularly as a significant part of the applicant's case relates to the increase in livestock. It was legitimate for the Council to raise a concern in this regard as no detailed written evidence of how the feeding requirements of the increased herd would be met had been provided. Ultimately, this issue was addressed by the applicant at the hearing and in my decision I have found no concern in this regard.

21. The officer report clearly sets out that the advice of its advisor was provided from an agricultural perspective. The report then goes on to set out other aspects of the enterprise that it was necessary to consider, including the contribution to the rural economy. The Board were therefore plainly made aware of the relevant aspects of the overall enterprise when making their decision. Notwithstanding the officer recommendation, the apportionment of weight is a matter for the decision maker. The Board is not duty bound to follow the advice of its professional officers. It appears from the evidence before me, including the Council's hearing statement, that the Board attached a different weight to the considerations relating to essential need, as is its right.

22. The Council's concerns can be clearly understood from its advisor's three letters and the contents of the Council's statement. The latter provides an explanation of why the business had not sufficiently changed since 2021 to warrant an overnight presence all year round. The Council, in dealing with the birthing requirements of alpacas articulated at the hearing that the applicant, having kept alpacas for a significant amount of time, would be able to see any signs of distress/illness and know when it would be necessary to stay with the animal, but that this would not be often. In the event that the birthing requirements of alpacas was not sufficiently evidenced to justify an all year round on-site presence, the consideration of alternative accommodation was a reasonable approach to take by the Council.

23. I have found that the reasons for refusal were substantiated in an objective manner. The proposed development required a judgement of whether the enterprise has an essential need for a worker to live there permanently or not. The matters at issue here concern the exercise of that judgement. Whilst I have not taken the same approach as the Council, it does not follow that the Council has acted in an unreasonable manner in exercising its own planning judgement.

24. There is no obligation for the Council to provide additional support to defend an appeal. Moreover, the officer was fully aware of the issues to be addressed.

Conclusion

25. For the reasons given above, I conclude that the Council did not act unreasonably in its defence of its decision. As such, unreasonable behaviour resulting in wasted expense at appeal has not been demonstrated. The application for a costs award is refused.

A Veevers

INSPECTOR