The Planning Inspectorate

Costs Decision

Hearing held on 9 October 2024

Site visit made on 9 October 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Costs application in relation to Appeal Refs APP/U2750/C/23/3334207 & APP/U2750/C/23/3334208
Butterwick Alpaca Retreat, Boynton Lane, Butterwick YO17 6PS

- 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 Mrs Anna Ramsey and Mr Christopher Ramsey for a full award of costs against North Yorkshire Council.
- The appeals were against an enforcement notice alleging the siting and residential use of a mobile home.

Decision

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

The costs application

2. The application was set out in writing at the hearing. It alleges that the enforcement notice was fundamentally flawed because the allegation was wrong and the planning unit had been incorrectly identified. It is argued that in the event that I agree and quash the notice, the flaws in the notice amount to unreasonable behaviour which led to an unnecessary appeal with its attendant costs. There was no new evidence from the hearing that had a bearing on the Council's judgements. No reasonable planning authority could have come to the same conclusions.

The Council's response

3. The Council responded verbally at the hearing. I was told the Council did not misapply the law but simply made reasonable judgements. The rationale for the Council's views is set out clearly in the officer's report of 20 October 2023. Even if I disagree with those judgements, they were not unreasonable, given what was known at the time.

Reasons

4. 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.

5. In my decision on the appeals, I have concluded that the enforcement notice is flawed, and I have quashed it. The question here is whether the notice was so obviously flawed that issuing it amounted to unreasonable behaviour.

6. Deciding the planning unit is an important first stage in considering the question of a material change of use, and is firmly rooted in case law[1]. However, applying the law involves a heavy dose of planning judgement. Here, while the appellants' land holding is plainly a single unit of occupation, it is not wholly uniform in character, with variation in terms of the number of buildings and the detailed function of different parts of the land. In these circumstances, it was not unreasonable for the Council to take the view that the entire holding was not a single planning unit.

7. It is true that the Planning Contravention Notice (PCN) issued in 2022 identified the whole of the appellants' holding. However, that cannot be taken as any indication about the Council's view regarding the planning unit. The purpose of the PCN was to gather information about a potential breach of planning control, and it is hardly surprising that the Council identified the entire block of land within the appellants' control. I do not see either that the Council was bound to conclude that the appellants' entire holding was a single planning unit simply because that land was identified in a planning application submitted by them.

8. I have come to the view that the whole site is in a mixed-use incorporating agriculture, the alpaca trekking/experience use and the siting of the mobile home for residential occupation. Thus, I consider that the notice was wrong to cite only the mobile home use. However, I am not persuaded that this was so obvious as to amount to unreasonable behaviour. Indeed, the appellants, represented by experienced professional agents, did not raise these particular concerns about the allegation in the notice until I raised my own concerns in a note issued about 2 weeks before the hearing, which indicates that it was not an entirely obvious point.

9. It also appears to me that certain matters that would have assisted the Council when drafting the notice were only clarified at the hearing. In fact, up until the hearing, it was the appellants' case that the alpaca trekking was an ancillary use, which would suggest that the appellants themselves did not initially regard it as one of the primary uses of a mixed use.

10. The appellants referred me to sections of the Planning Inspectorate's own training manual, in which the approach to dealing with flawed enforcement notices is discussed. As I explained at the hearing, the manual does not constitute Government policy or guidance and should not be treated as such. In any case, I have no reason to think that it was available to the Council when it was drafting the notice. Consequently, the Council cannot be criticised for taking a different approach.

Conclusion

11. For these reasons, I conclude that unreasonable behaviour has not been demonstrated. It follows from this that it is not necessary to consider the question of unnecessary or wasted expense, and an award of costs is not warranted.

Peter Willows

INSPECTOR

[1] See Burdle & Williams v SSE & New Forest DC [1972] 1 WLR 1207,