

Costs Decisions

Hearing held and site visit made on 12 July 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 02 August 2017

Costs application in relation to Appeal A Ref: APP/Y9507/C/16/3160807 Part of Old Hearne Farm, Jays Lane, Lurgashall, Haslemere, GU27 3BL

- The application is made under the Town and Country Planning Act 1990 ("the 1990 Act"), Sections 174, 322 and Schedule 6, and the Local Government Act 1972 ("the 1972 Act"), Section 250(5).
 - The application is made by Dr Anthony Klein ("the Applicant") for a full award of costs against the South Downs National Park Authority ("the NPA").
 - The Hearing was in connection with an appeal against an Enforcement Notice alleging the erection of a building and laying of a stone pavement in the approximate positions shown on the plan attached to the Enforcement Notice.
-

Costs application in relation to Appeal B Ref: APP/Y9507/W/16/3164171 Part of Old Hearne Farm, Jays Lane, Lurgashall, Haslemere, GU27 3BL

- The application is made under the Sections 78, 322 and Schedule 6 of the 1990 Act and Section 250(5) of the 1972 Act.
 - The application is made by the Applicant for a full award of costs against the NPA.
 - The Hearing was in connection with an appeal against the refusal of planning permission for the retention of the east barn and its immediate surroundings for mixed agricultural and equestrian purposes.
-

Decisions – Appeals A & B

1. The applications for awards of costs are refused.

Procedural Matters

2. The Appeal Decisions were issued on the 28 July 2017. I will refer to those Appeal Decisions in these Costs Decisions as "the Appeal Decisions".

The submissions for the Applicant

3. The costs application was submitted in writing prior to the Hearing being opened.

The response by the NPA

4. The response was made in writing prior to the Hearing being opened.

Advice in the National Planning Practice Guidance ("the PPG") and the National Planning Policy Framework ("the NPPF").

5. The PPG advises that:
 - a) 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.
-

- b) Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this include refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

6. The NPPF advises that:

- a) Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.
- b) Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.

Reasons – Appeal A

7. I explained in paragraph 3 of the Appeal Decisions that the Applicant withdrew his appeal against the Enforcement Notice.

8. I am aware:

- a) That the NPA may not have issued the Enforcement Notice at the date they did if there had been a valid planning application lodged with the NPA which remained undetermined.
- b) Of the Applicant's assertion that had the NPA provided information within a reasonable timeframe following the site meeting on 22 June 2016 ("the Site Meeting") then an amended planning application to address the matters raised by the NPA when they refused planning application Reference SDNP/15/06312/FUL on 27 April 2016.
- c) The Applicant's agent indicated on 16 May 2016 that a revised application would be lodged before the end of that month. This was a week before the Applicant's agent asked for a site meeting.

9. However, even if the Applicant had lodged the planning application SDNP/16/04559/FUL ("the Planning Application") earlier than he did it seems likely to me that the NPA would have issued the Enforcement Notice shortly after the Planning Application had been determined so that both the planning merits and any appeal against the Enforcement Notice could be dealt with at the same time thus saving costs and time for all parties concerned.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to the issue of the Enforcement Notice (Appeal A).

Reasons – Appeal B

11. As explained above, I am aware that the Applicant considers that the NPA should have responded much quicker than they did to requests for feedback following the Site Meeting.
12. That feedback was eventually provided on 21 September 2016 in the form of pre-application advice. The Applicant then supplemented the Design, Access & Planning Statement for Planning Application to take on board the feedback from the pre-application advice.
13. Even in the light of the Design, Access & Planning Statement as supplemented the NPA refused the Planning Application. Therefore, the delay in receiving the pre-application advice did not prejudice the Applicant's pursuit of obtaining planning permission for the Planning Application from the NPA.
14. Whilst I accept that the Applicant was making efforts to resolve the on-going planning issues with the NPA it appears to me that the NPA had fundamental objections to the retention of the East Barn because, amongst other things, they did not consider that there was an agricultural/equestrian need for it. That is a matter of planning judgement.
15. Further, the Applicant agreed through the appeal process to the removal of the roof-lights which makes the East Barn a credible storage facility for hay. The Appellant also agreed other matters which did not form part of the Planning Application. These matters had not been made clear to the NPA at the application stage and, in my assessment, the agreed changes were vital to the acceptability of the appeal proposal.
16. I am also aware that there were delays in securing an agreed Statement of Common Ground ("the SOCG"). However, the SOCG was available by the time the Hearing opened. Whilst it may have assisted me to have had the SOCG prior to that time I do not consider that there is sufficient evidence before me to show that the failure to agree the SOCG amounted to unreasonable behaviour by the NPA or that it caused the Applicant to incur unnecessary or wasted expense in the appeal process.
17. I do not consider that the NPA were unjustified in refusing the Planning Application. Clearly I did not agree with their assessment but I consider that the differences between the NPA's approach and mine resulted from:
 - a) Additional information and concessions that I received from the Applicant at the Hearing, and
 - b) My planning judgement based on the evidence that was before me.

There is no evidence to suggest that the NPA unreasonably delayed or frustrated the planning process.
18. In paragraph 40 of the Appeal Decisions the Officer representing the NPA claimed that she had not seen the East Barn being used for the level of storage which I saw on the 12 July 2017. The Applicant suggests that the East Barn was being used for storage at the time of the Site Meeting. However, there is no evidence as to what the level of storage was like at that date and I have no reason to consider that the Officer representing the NPA was deliberately trying to mislead me about her earlier observations.

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated in relation to the refusal of planning permission for the Planning Application (Appeal B).

Tim Belcher

Inspector