



Costs Decision

Site visit made on 15 May 2018

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th June 2018

Costs application in relation to Appeal Ref: APP/Y9507/W/17/3181594 16A Lavant Street, Petersfield GU32 3EW

- 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 Mrs Rosie Packham-Boyns for a full award of costs against the South Downs National Park Authority.
 - The appeal was against the refusal of planning permission for a ground and first floor extension to hairdresser salon with full width first floor extension to north end that narrows by just over 2 metres for about 20 metres to ensure daylight provision into adjacent garden before being full width again towards the south end and the Swan Street car park.
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. Paragraph 030 of the Planning Practice Guidance's (the PPG) section on appeals advises that, irrespective of the outcome of an appeal, 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. A full award of costs has been sought by the applicant on a substantive basis. The applicant contends that it was unreasonable for planning permission to have been refused on the basis of a loss of outlook from and the overshadowing of the rear garden of the flat at 14 Lavant Street (the Flat). With respect to overshadowing it is contended that the Authority failed to pay any regard to the shadow diagrams that accompanied the planning application and which were prepared in accordance with the relevant Building Research Establishment (BRE) guidance, with no reference to those diagrams being made in the Authority's officer report or on its decision notice. It is further contended that the Authority failed to weigh the social and economic benefits of the development against any harm and that had a weighing exercise been undertaken then the conclusion would have been to grant planning permission.
4. The reason for refusal raised two concerns with respect to the development's effects on the living conditions for the occupiers of the Flat. Namely a loss of light/overshadowing of the Flat's garden (the loss of light concern) and the loss of outlook from that garden. The loss of light concern is a matter that is capable of being assessed objectively using a widely recognised assessment

methodology, ie the guidance provided by the BRE. The consideration of the effect on outlook is, however, more subjective and deciding whether there would or would not be an adverse effect on outlook requires the use of judgement.

5. With respect to the loss of light concern no reference was made to the submitted overshadowing diagrams in the Authority's officer report and because of that it would appear that they formed no part of the Authority's assessment of the development. It would also appear that prior to the planning application's determination the Authority undertook no other objective lighting effect assessment of its own. In connection with the appeal the Authority has similarly provided no objective evidence to counter the applicant's submissions with respect to the loss of light concern.
6. The Authority has stated that the BRE methodology can be 'useful' but is only an objective good practice guide that cannot negate the exercise of the authority's own planning judgement. That is a proposition that I would accept when effects of a more subjective nature are being assessed, such as any effect on outlook. However, with respect to the potential for the loss of light I do not find the Authority's position to be persuasive. That is because the BRE guidance has been available for a considerable period of time and is recognised as being an appropriate methodology for assessing the lighting impacts of new development.
7. The submitted overshadowing diagrams demonstrate that there would be some increased overshadowing of the Flat's garden. In determining the appeal I have concluded that the effect would not be of such a magnitude as to warrant the withholding of planning permission. Had the Authority made use of the submitted overshadowing diagrams or undertaken some other form of objective assessment then it might have reached an alternative conclusion with respect to the loss of light concern. I consider with respect to the loss of light concern that the Authority's officer report and appeal case have both failed to provide any technical evaluation to countermand the applicant's evidence. Accordingly I consider that the loss of light concern has not been substantiated and that its inclusion in the reason for refusal was ill-conceived.
8. I am therefore of the opinion that the identification of the loss of light concern falls into the category of being a generalised assertion for the purposes of the third bullet point stated in paragraph 049 of the PPG¹. In the absence of evidence being presented by the Authority to substantiate the loss of light concern, I consider its inclusion was unreasonable, resulting in the applicant incurring unnecessary expense in respect of this part of its appeal.
9. In determining the appeal I have, however, concluded that the development would have an unacceptable effect on the outlook for the users of the Flat's garden, and that that would be harmful to the living conditions of the occupiers of that dwelling. I have gone on to conclude that the harm to the living conditions of the occupiers of the Flat outweighs the development's economic and social benefits. I therefore consider that the case made by the Authority has substantiated its outlook concern and that it was reasonable for it to have included this matter in the reason for refusal. In this regard I consider the applicant has not demonstrated any unreasonable behaviour on

¹ Paragraph: 049 Reference ID: 16-049-20140306

the Authority's part with respect to the identification of the outlook concern, having regard to the provisions of paragraph 049 of the PPG.

Conclusion

10. For the reasons given above I conclude that while it was reasonable for the Authority to have refused planning permission because of the development's effect on the outlook from within the Flat's garden, it was unreasonable for the loss of light concern to have been included in the reason for refusal. I further conclude that the inclusion of the loss of light concern has resulted in the applicant incurring some unnecessary expense in the appeal process and that in that regard a partial award of costs against the Authority is warranted.

Costs Order

11. 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 the South Downs National Park Authority shall pay to Mrs Rosie Packham-Boyns, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the issue of the loss of light within the rear garden of 14 Lavant Street; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to the Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Grahame Gould

INSPECTOR