



Costs Decision

Hearing Held on 7 August 2019

Site visit made on 13 August 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Costs application in relation to Appeal Ref: APP/Y9507/W/18/3214126 The Black Fox Inn, Portsmouth Road, Milland, GU30 7JJ

- 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 Harry Lawson of Green Roots Nursery for a partial award of costs against the South Downs National Park Authority.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use from Class A4 public house to class D1 children's nursery and pre-school, together with associated works.
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Decision

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

The submissions for Mr Harry Lawson of Green Roots Nursery

2. This was made in writing prior to the event. In summary, a partial award of costs is sought on the basis that the Authority incorrectly identified a conflict with the development plan in its first reason for refusal. It is also argued that, in failing to acknowledge that the proposal would comprise a community use the approach differed to other cases in the National Park.

The response by the South Downs National Park Authority

3. This was made in writing prior to the event. In summary, it is argued that the policies were interpreted correctly, and the proposal use was evaluated on its planning merits.

Reasons

4. The Planning Practice Guidance 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. Planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the time the planning application was determined the most relevant development plan policy to the first reason for refusal was BE2 of the Chichester District Local Plan First Review (1999). This states that applications for a change of use which would result in the loss of a community facility will only be permitted where it can be demonstrated that there is no longer a demand for the facility within the area and that the premises have been marketed for a reasonable period of time at a price which reflects the existing use, size and condition of the property.

6. Accordingly, Policy BE2 does not automatically support a change of use between community uses. As a specific community use would be lost, it is reasonable to conclude that the tests summarised above were engaged. This would have been the case even if the Authority were to have accepted that the proposed use was a community use. Accordingly, the position taken by the authority in its first reason for refusal was based on a reasonable interpretation of the most relevant development plan policy to the issue under examination. It elaborated on why it considered there was still a demand for the facility and provided specialist advice to substantiate its position in advance of the hearing. In consequence, it did not act unreasonably in relation to this issue.
7. Policy SD43 of the South Downs National Park Authority: South Downs Local Plan (2019) sets out more detailed marketing tests which apply where the loss of an existing community facility is being proposed and provides a more detailed definition of a community use. Whilst referred to as an emerging policy in the decision notice, it did not formally become part of the development plan until shortly before the hearing, beyond the point where the appeal statements had been submitted.
8. Regarding this policy, the appellant argues that as the proposal comprises an equivalent community use there is no conflict with it. The authority provide a different interpretation of this policy, advancing the argument that the proposed use was not a community use and insufficient marketing had taken place to justify the loss of the existing facility. Whilst the planning appeal decision makes clear that I agree with the appellant on this point of interpretation of the development plan, this is a matter of planning judgement and policy interpretation which the appeal process fundamentally seeks to resolve. As such, the Authority did not act unreasonably taking the position it did.
9. Whilst other examples of development involving nurseries are cited, none of these involve the change of use of a pub to a nursery. Furthermore, they predate the adoption of the new Local Plan. As such, they are not directly comparable to the proposed development. Whilst officers acting on behalf of the Authority appear to have generally described nurseries and pre-school facilities as community uses, in this case the Authority argued that due to the lack of information about the demand within the community for such a use, this description does not apply here. Whilst the planning appeal decision makes clear that, having regard to the wording in the adopted plan, I also agree with the appellant on the substantive issues in this dispute, the Authority provided an adequate justification as to why a different approach was adopted. It did not act unreasonably in taking the stance it did.
10. In conclusion, I cannot agree that the Authority has acted unreasonably in any aspect of this case. As such there can be no question that the Applicant was put to unnecessary or wasted expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. For the reasons set out above, an award of costs is not justified.

Neil Holdsworth

INSPECTOR