



Costs Decision

Site visit made on 10 December 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Costs application in relation to Appeal Ref: APP/Y9507/W/19/3236446 6, The Old Dairy, Station Road, Petersfield GU32 3ED

- 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 J Bloch against South Downs National Park Authority.
 - The appeal was against the Authority's refusal of planning permission Ref SDNP/18/06607/FUL, dated 24 December 2018, via decision notice dated 20 June 2019 for the erection of a single terrace comprising three townhouses.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains that costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process.¹ Costs applications may relate to events, if not expenses incurred, before an appeal was brought.²
3. The appellant's case for a full award of costs is on both procedural and substantive grounds, albeit that the two are interlinked. The appellant's statement of case in respect of the associated appeal explains how, in his view, the Authority acted in a 'slow and irrational' manner, with some 25 weeks elapsing between the submission of application Ref SDNP/18/06607/FUL and its determination. The costs application, stated to be 'effectively a summary of the statement of case', also argues that the Authority failed to substantiate their position regarding the extant use of the appeal site for employment, and to justify their objection to the scheme in respect of outside space provision.³
4. I accept 25 weeks is lengthy. That significantly exceeds the relevant statutory timescale. However that appears to have, in part, resulted from a relatively constructive process of engagement between the main parties that sought to resolve certain matters, notably the bearing of noise associated with the nearby railway. Revised plans were also submitted, as referenced in paragraph two of the associated appeal decision. Whilst I accept that the extant use of the site is complex and the main parties have different views as to the relevance

¹ Reference ID: 16-028-20140306.

² Reference ID: 16-032-20140306.

³ Noting PPG Reference ID: 16-049-20140306.

thereof, that is essentially a substantive matter. The appellant would also have been aware of that difference of opinion from previous proposals.⁴

5. Moreover the planning history to the appeal site, a component of a formerly more extensive holding, is not straightforward. The appeal was also determined at a point when a the South Downs Local Plan was emerging (adopted 2 July 2019, the 'LP'), adding a further overlay to proceedings. Moreover there is nothing to indicate that the delay in determination disadvantaged the appellant; relevant recent policies are similar to previous provisions. As a point of fact the recent marketing of the site was neither for a continuous period of 6 or 12 months with reference to policy BP2 of the Petersfield Neighbourhood Plan (made originally on 21 January 2016, the 'NP') or LP policy SD35 respectively. Costs may not be claimed for indirect losses, for example holding costs incurred awaiting an outcome.
6. I also explained in the associated appeal decision how there is compelling local evidence of need for employment land. In that context and given the complexity of the planning history to the site, I set out in paragraph 14 of the appeal decision that it is therefore not unreasonable to argue that the proposal would, without evidence of adequate marketing, prevent a site from being used beneficially for local employment. Relevant elements of the development plan and material considerations are referenced by the Authority in their decision notice and at appeal, albeit that my judgement differed from theirs.
7. I acknowledge that different refuse storage options were advanced, the footprint of the proposed dwellings revised, and that provision could have been addressed by way of appropriate condition. I accept that the Authority could have approached that more proactively or clearly, in line with paragraph 38 of the National Planning Policy Framework ('NPPF'). However that is a very minor element of their case. Identifying and planning an appropriate approach in respect of refuse would have entailed the need for some work to achieve a satisfactory scheme (such that unnecessary expense in incidental).
8. I also accept that the 10m rule of thumb in respect of rear garden length cited by the Authority is informal. However the Authority does not directly suggest that it derives from any particular policy or guidance. Moreover the acceptability of garden space, or lack of it, is a matter of planning judgement. Given the nature of the appeal site and surroundings, I found that its absence in this instance would be detrimental to living conditions, in respect of which a high standard expected via NPPF 127(f), that paragraph being cited in the Authority's decision notice. As such the Authority's objection on this matter was not inherently unreasonable.
9. Whilst LP policy SD5, then emerging, was not cited in the Authority's decision notice, that does not mean that it ceases to exist; an appeal must be taken in the light of current circumstances. Therefore irrespective of whether a conscious or unconscious omission, the relevant provisions of SD5 and of the NPPF as regards living conditions are similar, and reliant on exercising judgement. Many of the additional concerns raised by the appellant in respect of the Authority's reasoning are dealt with substantively in the appeal decision.

⁴ Including applications Ref 25035/012 and SDNP/19/03176/PA30.

10. At appeal the Authority have identified relevant elements of the development plan, evaluating their bearing on the development proposed alongside considering in detail the nature of the site, development proposed, and planning history in this location. As such, in my view, the Authority's handling of the scheme was appropriate and its opposition to it reasonable and founded on broadly sound reasoning. It has therefore not been demonstrated that unreasonable behaviour resulting in unnecessary or wasted expenses occurred.

Conclusion

11. Having taken account of all other relevant matters, I conclude that unreasonable behaviour resulting in unnecessary expense at appeal has not been demonstrated in this instance. Accordingly, and with reference to the approach in the PPG, an award of costs is not justified.

Thomas Bristow

INSPECTOR