
Costs Decision

Hearing Held on 7 and 26 November 2019

Site visits made on 7 and 26 November 2019

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Costs application in relation to Appeal Ref: APP/Y9507/W/18/3210231 Land East of Pony Farm, Findon, BN14 0RS

- 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 Peter Leach for a full or partial award of costs against South Downs National Park Authority.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of new dwelling, landscape enhancements and associated works.
-

Decision

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

The submissions for Mr Leach

2. This was made in writing prior to the event. The following additional points were made at the event, in relation to the adjournment on 7 November.
3. The Authority were required to give notice to interested parties 14 days prior to the hearing and in this case they failed to do so. This led to the adjournment of the event on 7 November. The Authority were aware of the event date since August 2019. The avoidable costs incurred on the part of the appellant were primarily the attendance of the professional team at the aborted event.

The response by the South Downs National Park Authority

4. This was made in writing prior to the event. The following additional points were made in relation to the adjournment on 7 November, in response to the verbal submissions by the appellant at the hearing.
5. Whilst the date of 7 November had been agreed since August 2019, no fixing letter was ever sent by the Planning Inspectorate (PINS) formally confirming this, setting out the necessary notification requirements. The internal procedures at the Authority are such that the administration team would not normally notify interested parties until this letter is received.

Reasons

6. 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. An award of costs may either be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

Procedural Issues - Adjournment

7. Planning Practice Guidance identifies the failure to notify the public of a hearing as an example of unreasonable behaviour that may lead to a procedural award of costs, where it leads to the need for an adjournment.
8. The hearing was originally scheduled for 19 June 2019. Whilst interested parties were given 2 weeks notice of this event, it was postponed by PINS due to illness. Correspondence subsequently took place over the course of August 2019 and a new date of 7 November was agreed in email exchanges. However, this was never formally confirmed in writing by PINS through a fixing letter confirming the date, time and details of the venue and setting out notification requirements for interested parties.
9. Despite this, the Authority did notify interested parties of the hearing on 31 October 2019, 7 days before the event and in the absence of a fixing letter. However, it was clear upon opening the event that interested parties had wished to attend but were unable to do so due to the short notice. Proceeding with the event would have potentially prejudiced the interests of these parties, and consequently it was necessary to adjourn the hearing.
10. Whilst the Authority were aware of the new hearing date for several months, on this occasion the requirement to give 2 weeks notice was not formally set out in writing by PINS. The Authority explained at the hearing that its administrative procedures rely on accurate information in the form of a fixing letter for each event. This is a reasonable explanation for the failure to notify interested parties of the hearing and leads me to conclude that the adjournment was not the result of unreasonable behaviour on the part of the Local Planning Authority.

Substantive planning issues

11. The applicant submits that in describing the site as forming part of open downland, the Authority relied on a flawed description of the landscape which the site forms a part. In pursuing the planning application and appeal, the applicant provided evidence that the site should instead be considered as part of a contained equestrian landscape on the edge of Findon, distinguishable from the surrounding downland and closely related to the settlement.
12. The planning appeal decision makes clear that I largely accept the points made by the appellant on this particular issue. However, this is a matter of planning judgement. The stance taken by the Authority was not unreasonable, given that the site comprises an open paddock that is essentially contiguous with the downland in question. It did not act unreasonably in describing the site in this way, nor did it rely on vague or unsubstantiated assertions about landscape impact in defending the appeal.
13. At the time that the original decision was made the South Downs Local Plan had not been adopted and the development plan comprised saved policies in the Arun District Local Plan, dating back to 2003. In this context, the Authority had regard to policies in the National Planning Policy Framework ("the Framework"), published initially in 2012, including those relating to housing in rural areas, but nonetheless concluded that there would be unacceptable harm to the character and appearance of the area and that planning permission should therefore be refused.

14. The recent case law¹ cited by the appellant relates primarily to the definition of isolated dwellings for the purpose of the Framework. The Authority acknowledge in the officer report that this proposal would not comprise an isolated dwelling. The interpretation of the policies on rural housing, as set out in the Framework, and the weight that should be given to any consequential support for the proposal are fundamentally a matter of planning judgement. They also need to be considered alongside other policies in the Framework, including those which seek to conserve and enhance landscape and scenic beauty within national parks. I do not agree that the Authority failed to act in accordance with established case law, in how it applied national planning policy when determining the planning application.
15. Considering the other recent approval cited by the applicant, the 2015 permission at Soldiers Field stables comprises an element of equestrian development. In this respect it differs to the proposal that was the subject of this appeal decision, which was for a single residential dwelling. It is therefore clear that the proposals are not identical, and the decision to refuse planning permission was not inconsistent with this previous decision by the Authority.
16. The Authority also cite policies in the then emerging South Downs Local Plan in its decision notice. At that point the examination of the emerging plan was not complete. The delegated report suggests that considerable weight should be given to these emerging policies, whilst the reason for refusal indicates that the weight to both the adopted plan and the emerging plan should be moderate.
17. These positions are not consistent with each other. However, the reason for refusal clearly described the harm that would arise, and the delegated report identifies how the proposal would conflict with the cited policies. Furthermore, the policies in both the adopted and emerging plans share broadly similar objectives, as they both seek to achieve a high standard of design and protect the character and appearance of the area. On the evidence before me the Authority applied Section 38 (6) of the Planning and Compulsory Purchase Act 2004 in determining the application that led to the planning appeal. It did not give inappropriate weight to an emerging plan in its decision to refuse planning permission.
18. The plans listed on the decision notice did not include all the information submitted in support of the planning application. Furthermore, the decision notice did not include a statement that it worked in a positive and proactive manner with the applicant, as required by legislation. However, it is clear from the officer report and submissions with the appeal that the Authority had regard to the information submitted in support of the proposal in its assessment of the case. The stance taken by the Authority indicates that it contests the principle of development, regarding the proposal as conflicting with policies in the development plan and the Framework principally due to unacceptable harm to the character and appearance of the area. As such, a more positive and collaborative approach towards the proposal would have been unlikely to change the outcome of the planning application that led to the appeal.
19. Planning Practice Guidance makes clear that where a local planning authority has refused a planning application that is not in accordance with the

¹ Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited and Granville Developments Limited (2017)

development plan policy, and no material considerations including national planning policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application. In this case, the planning appeal decision makes clear that I agree the proposal would result in unacceptable harm to the character and appearance of the area, and that planning permission should be withheld for this reason.

20. As such, the issues identified by the appellant in how the Authority dealt with the substantive planning issues involved in this case did not result in the authority preventing or delaying development that should clearly be permitted. As such, unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.
21. I note that the Inspector in the 2018 appeal decision on the same site² came to the same conclusion in the associated costs application. However, I have dealt with this costs decision on the evidence before me.

Conclusion

22. For the reasons set out above, neither a full nor a partial award of costs is justified.

Neil Holdsworth

INSPECTOR

² APP/Y9507/W/18/3196923