The Planning Inspectorate

Costs Decision

Site visit made on 22 January 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

**Costs application in relation to Appeal Ref: APP/Y9507/W/19/3239911
Old Coach House, Hill Brow, Liss GU33 7PB**

- 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 Janice Hall for a full award of costs against South Downs National Park Authority.
- The appeal was against the refusal of planning permission for a proposed replacement dwelling.

Decision

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

Procedural Matter

2. The applicant has not specified as part of their costs application whether they seek a full or partial award of costs. Based on the details of their submission I have considered the application as seeking a full award of costs.

Reasons

3. Paragraph 030 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal. The applicant has identified three grounds on which they consider the National Park Authority (NPA) to have behaved unreasonably.

Depth of heritage asset assessment

4. The first ground relates to the NPA's assessment that both the Old Coach House on the appeal site and neighbouring property Arawai House represent non-designated heritage assets. The applicant has expressed that the NPA has not adequately demonstrated, by way of supporting objective evidence, that either property should be appropriately deemed non-designated heritage assets.

5. Paragraph 190 of the National Planning Policy Framework (the Framework) specifies that the NPA should identify and assess the particular significance of any heritage asset that may be affected by a proposal taking account of the available evidence and any necessary expertise. Subsequently, Paragraph 040 of the Historic Environment PPG enables the NPA to appropriately identify non-

designated heritage assets through the decision making process on planning applications, and clarifies that it is not necessary for such assets to be formally identified by way of a local heritage list or historic environmental record.

6. The evidence provided by the NPA demonstrates that this has occurred. The assessment of the NPA Conservation Officer considered Historic England guidance[1] and the NPA's Local Heritage List selection criteria, used the evidence available, including submissions by the applicant, and was based on their local expertise. Notwithstanding the ultimate conclusion of the related appeal, the NPA carried out an assessment which is considered appropriate for the identified significance of the described non-designated heritage assets.

7. I am therefore satisfied that the NPA has not acted unreasonably in this respect.

Heritage balance

8. The second ground relates to Paragraph 197 of the Framework and the need to carry out a balanced assessment having regard to the identified harm and significance of a heritage asset.

9. While not explicitly worded as such within the NPA officer delegated report, a balanced assessment was carried out identifying the significance of the non-designated heritage assets, the harm they considered would result from the appeal proposal, and the weight they identified to be given to such harm under the Framework. They also separately outlined that there were no public benefits identified that they considered would outweigh the identified harm in balancing their judgement. The conclusion of this assessment is reflected in the reasons for refusal on the decision notice which refer to the policies of the South Downs Local Plan (LP) and Section 16 of the Framework, which encompasses Paragraph 197.

10. I am therefore satisfied that the NPA has not acted unreasonably in this respect.

Relevance of Policy SD30 of the South Downs LP

11. The final ground relates to the applicability of Policy SD30 of the South Downs LP to the assessment of the proposed replacement dwelling. Policy SD30 relates to replacement dwellings outside defined settlement boundaries. The applicant considers the policy to be of key relevance to the appeal proposal, which was verified by the NPA in pre-application advice and within the officer delegated report. Despite this, the NPA did not carry out an assessment against this policy bringing into question whether the proposal was correctly assessed.

12. The NPA confirms that the omission of Policy SD30 from their assessment was deliberate, and was done so on the basis that they dispute the description of the proposed development as a replacement dwelling. The NPA contests that as the necessary works under the existing planning permission[2] to convert Old Coach House into a habitable dwelling have not been carried out, that there is no existing residential dwelling for the proposed development to replace.

[1] Conservation Principles, Policies and Guidance (English Heritage/Historic England, 2008)
[2] NPA Ref: SDNP/17/00659/FUL

13. Whilst in practical terms a habitable dwelling has not been established on the appeal site, the planning permission which granted the residential conversion and use of the Old Coach House[2] has been commenced, with material operation works being carried out, and therefore remains extant in perpetuity as set out in the applicant's submitted legal opinion. The permission[2] is therefore considered to have 'legally established' the residential use of the site for the purposes of Paragraph 7.87 of Policy SD30.

14. It was therefore necessary for the NPA to carry out an assessment against Policy SD30 to inform their final decision on the proposed development, and as such this equates to unreasonable behaviour.

Unnecessary or wasted expense

15. Of the above grounds, the NPA has only been deemed to have behaved unreasonably with respect to the relevance of Policy SD30 of the South Downs LP to the assessment of the application. As no unreasonable behaviour has been identified with respect to the other two grounds there is no need to enter into any further discussion regarding any unnecessary or wasted expense attributed to the commission of a heritage expert.

16. The applicant has advised that they obtained legal opinion clarifying the relevance of Policy SD30 of the LP to the assessment of the appeal proposal following the NPA's decision. Should the NPA have assessed this policy in the first place this expense would likely not have been incurred by the applicant.

17. I note further that Paragraph 046 of the Making an Application PPG reiterates the NPA's responsibility to ensure that the description of development provided by an applicant is correct. The NPA had an opportunity at the validation stage to engage with the applicant and discuss their concerns over the proposed description of development. No evidence has been provided to suggest such discussions occurred and that agreement was reached on the description of development. Had this dialogue been carried out early in the application process, as opposed to simply being detailed within the NPA officer delegated report, it is likely that the appeal before me could have been avoided.

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified for the costs incurred in obtaining legal opinion pertaining to the relevance of Policy SD30 of the South Downs LP.

Costs Order

19. 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 South Downs National Park Authority shall pay to Mrs Janice Hall, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in obtaining legal opinion regarding the relevance of Policy SD30 to the assessment of the appeal proposal.

20. The applicant is now invited to submit to South Downs National Park 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J Gibson

INSPECTOR