



Costs Decision

Site visit made on 28 January 2020

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2020

Costs application in relation to Appeal Ref: APP/Y9507/W/19/3241281 Barn at Downlands Farm, Ovenhay Copse Lane, Priors Dean, Hampshire GU32 1BP

- The application is made under section 322 of the Town and Country Planning Act 1990, Regulation 17 of the Town and Country Planning (Control of Advertisements) Regulations 2007, and section 250(5) of the Local Government Act 1972.
 - The application is made by Mr & Mrs David Bridger for a full award of costs against South Downs National Park Authority.
 - The appeal was against the refusal of refusal to grant approval required under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) for the change of use of agricultural building to a flexible use - guest house.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The Authority has not prevented or delayed development which should clearly be permitted because the appeal has been dismissed. The Authority has produced and made publicly available evidence to substantiate its objections having regard to legal judgements¹. Based on this, it argued that the context in which a condition had to be construed, included the planning history of the site, and the reasons for imposing such a condition, which it has detailed. Inevitably, there is some subjectivity in applying legal principles because every proposal will differ. For these reasons, it has substantiated its case with objective analysis and has not acted contrary to or not followed well-established case law.
4. Within the PPG, an example of unreasonable behaviour is a delay in providing information or other failure to adhere to deadlines. The Authority accepts the prior approval application was determined outside of the determination period. It has accepted that the officer report for the proposal did not appear on its website. Parties are expected to behave reasonably throughout the planning

¹ *Dunnett Investments Limited v. Secretary of State for Communities and Local Government, East Dorset District Council* [2017], *EWCA Civ 192* & *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2015] UKSC 74.

process. However, the decision notice clearly and precisely identifies the issue whilst its statement of case expands upon this. It has also indicated that extensive communication between the case officer and the applicants' agent made clear the reasons for refusal. Although the applicants have commented on the lack of communication during the prior approval process, they have not rebutted the Authority's comments about communication after the decision notice issue. The applicants' statement of case would suggest communication at this stage given that they state that the Authority indicated a previous GPDO determination of no objection to a prior approval application was erroneous. Moreover, costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage although behaviour and actions at the time of the planning application can be taken into account into an appeal award of costs.

5. The applicants have drawn to my attention to similar cases, including on the appeal site, and the Authority's purported inconsistency in dealing with these compared to the appeal proposal. However, every proposal of the nature before me has to take into account guiding legal principles and the facts. In these other decisions, it is unclear how the Authority has dealt with them based on these matters because the decision notices and reports submitted to me do not provide any detail on these matters. It is unfortunate that no decision was made during the prior approval determination period and that there was a lack of website publicity for the officer's report but it has not been demonstrated that this has put the applicants to unreasonable expense. Based on the Authority's objections, the appeal would still have been necessary.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Jonathon Parsons

INSPECTOR