

Costs Decision

Site visit made on 12 October 2020

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Costs application in relation to Appeal Ref: APP/Y9507/W/20/3249097 Danesfield, The Street, Upper Farringdon, Alton GU34 3DT

- 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 M Burnett for a full award of costs against South Downs National Park Authority.
 - The appeal was against the grant subject to conditions of planning permission for 'Demolition of Danesfield and attached garage and the erection of a replacement four bed detached dwelling, with attached garage and carport'.
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Decision

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

Reasons

2. The national Planning Practice Guidance¹ (PPG) states that costs may be awarded where a party has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG² lists different types of behaviours which may give rise to a substantive and/or procedural award against local planning authorities.
3. The applicant is seeking a full award of costs against the Authority for imposing a number of conditions which, it is argued, fail to meet the six tests set out in paragraph 55 of the National Planning Policy Framework (the Framework) and guidance contained within the PPG. Consequently, the applicant considers that these conditions have resulted in an unnecessary appeal to seek their removal or variation.
4. In particular, the applicant argues that the Authority acted unreasonably by failing to take account of the assessment and reasoning of the Inspector in the previous appeal decision. I agreed and find that the Authority acted unreasonably with regard to the wording of condition 8, which refers to the incorrect plan and did not take account of the previous Inspector's comments regarding the marking of parking spaces. The Authority accept that these were drafting errors, but there was nonetheless a limited element of unnecessary expense in the appeal process, and a partial award of costs is justified in that particular regard.

¹ Appeals (Paragraph: 030 Reference ID: 16-030-20140306).

² Paragraph: 049 Reference ID: 16-049-20140306.

5. Furthermore, condition 3 specifically removed the permitted development rights afforded by Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (the Order). However, development is not permitted by Class B if the dwellinghouse is on article 2(3) land, and part of the condition imposed by the Authority was subsequently not necessary. Whilst the applicant has not been prejudiced by the removal of this right in the condition, which he does not benefit from anyway, its imposition, having regard to the PPG, was unnecessary and the Authority's behaviour in that respect was thus unreasonable. There was a limited element of unnecessary expense in the appeal process, and a partial award of costs is therefore justified on this matter.
6. In relation to the remaining parts of conditions 3 and 8, but also conditions 6, 9, 10, 11 and 12, some were found to meet the tests, whilst others needed to be amended or removed. The Authority's submissions were reasonably justified and included reasons for imposing the conditions. In some respects, the Authority was not satisfied that the level of information provided as part of the application was sufficient. Although I have reached a different view, notably regarding condition 9, this is largely a matter of judgment, and the Authority's behaviour was not unreasonable in its ordinary meaning. Consequently, an award of costs in respect to these conditions is not justified.

Conclusion

7. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated, and a partial award of costs is therefore justified in this instance, in respect of the unnecessary expense incurred by the applicant to contest part of condition 3, which removed permitted development rights afforded by Schedule 2, Part 1, Class B of the Order, and the wording of condition 8. A partial award of costs is justified on these grounds only.

Costs Order

8. 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 the South Downs National Park Authority shall pay to Mr M Burnett, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the removal of permitted development rights under Schedule 2, Part 1, Class B of the Order and the wording of condition 8; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the 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.

S Edwards

INSPECTOR