



Costs Decision

Hearing Held on 16 August 2022

Site visit made on 16 August 2022

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Costs application in relation to Appeal Ref: APP/Y9507/W/22/3296522 Land South of Kingsmead Close, Bramber BN44 3QB

- 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 the South Downs National Park Authority for a partial or full award of costs against Mr N Quincey.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 8 dwellings together with associated access, car parking and landscaping.
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Decision

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

The submissions for the South Downs National Park Authority

2. The application is made on substantive grounds, namely that the appeal had no reasonable prospect of succeeding. An amended costs application was submitted at the Hearing. This removed the reference in the original application to 3 hours of solicitor time in terms of costs claimed.
3. The site has been assessed on multiple occasions since 1968 in terms of its suitability for housing and has consistently been found to be unsuitable for such development. This has included pre-application advice, 4 refused planning applications, 2 dismissed appeals, a Strategic Housing Land Availability Assessment and the Bramber Neighbourhood Development Plan (NDP) Sites Assessment.
4. In 2010 the site became part of the South Downs National Park, which has the highest status of landscape protection. The site is a characteristically wooded plot, outside the settlement boundary. It is protected by a Tree Preservation Order and comprises Natural England priority woodland habitat. Residential development would significantly harm the designated landscape and would result in the permanent loss of the priority woodland habitat. It would fail to conserve and enhance the natural environment, contrary to the National Park's statutory first purpose.
5. The proposed development would be contrary to Policy SD25 of the South Downs Local Plan (LP) which resists development in the rural area. The Council has a housing land supply of over 6 years and its policies are not out-of-date. Even if they were, the National Planning Policy Framework's policies which relate to the National Park justify permission being withheld.

6. The appellant relies on the degraded condition of the woodland, but this cannot provide justification for development in terms of the protected landscape. The woodland positively contributes to the landscape of the National Park despite its condition. It also remains of significant ecological value.
7. The appellant also relies on the findings of a Housing Need Assessment which was undertaken to inform the NDP. That assessment is based on a projection of the wider need identified in Horsham District, with a 'fair share' to be provided in the part of Bramber parish that falls within the National Park based on an area calculation. This assessment takes no account of the landscape designation. The assessment is neither a housing target nor a housing policy. The NDP did not allocate any housing sites or include any housing policies. The site was deemed unsuitable for development by the Neighbourhood Plan Group.
8. The proposed development is clearly not in accordance with the development plan and is contrary to the National Park's first purpose. The appellant has not advanced any material consideration that justifies a departure from planning policy.
9. The appeal has resulted in unnecessary or wasted expense in terms of officer time and postage costs.

The response by Mr N Quincey

10. The appellant submitted evidence by landscape and ecology professionals which demonstrate that there would not be any significant harmful impact on the landscape and habitat. By virtue of the proposed planting, the proposal would provide enhancement.
11. A view could be taken that Policy SD25 does not apply to development outside the settlement of Bramber, because that settlement is not identified in the policy. Policy B1 of the NDP provides for development outside the Built Up Area Boundary if it preserves or enhances the character or appearance of the area. That policy may be seen to be generally supportive of the proposal. Policies B2 and B3 of the NDP concern the effect on character and appearance. There is no NDP policy objection to the proposal.
12. The proposal would provide much needed housing as revealed by the 2018 Housing Need Assessment.
13. An appeal decision¹ is referred to in which housing land supply was found to be 5.039 years. Water neutrality and nutrient neutrality may have an effect on housing land supply. It is far from certain that the Authority will be able to maintain a 5 year supply.
14. Although the site has been assessed previously, development plan policies have changed over the years. The development is not clearly in conflict with the development plan.

Reasons

15. At the Hearing, the appellant agreed that Policy SD25 of the LP is a policy that is most important for determining the application and that it is not out-of-date. Part (2) of that policy permits development outside settlement boundaries in exceptional circumstances, which are set out in sub-paragraphs (a) to (d). It is

¹ APP/L3815/W/21/3284653

- clear that Policy SD25 applies to the proposed development and that the proposal does not accord with it. This was also agreed at the hearing.
16. Policy B1 of the NDP similarly resists development outside the Built Up Area Boundaries unless it is in accordance with the policies of the LP. This policy must be read in conjunction with Policy SD25. The proposal does not accord with Policy B1 as a matter of principle, and this was agreed between the parties.
 17. Criterion (b) of Policy B1 requires development to preserve or enhance the character or appearance of the area. The appellant submitted reports with the planning application, including a Landscape and Visual Impact Assessment, an Ecological Impact Assessment and an Arboricultural Impact Assessment. There were clearly differences of professional opinion between the appellant's consultants and the Authority's officers as to the impacts of the proposal in terms of planning policy and the purposes of the National Park.
 18. However, the suitability or otherwise of the site for residential development has been assessed on numerous occasions over the years with consistent results. Although the appellant has pointed out that planning policies change there has been no change in policy that would make the development acceptable in principle.
 19. The appeal decision referred to by the appellant relates to a site in Chichester District Council's area and in terms of housing land supply is not relevant to the proposal. It is clear that the Authority has more than 5 years' housing land supply and that its policies are up-to-date. While the appellant's points about water and nutrient neutrality are noted, any assessment of whether policies are out-of-date must be based on current housing land supply.
 20. I found in my decision on the appeal that the Housing Need Assessment that was undertaken to inform the NDP does not weigh in favour of the development because it does not take account of constraints including the National Park designation. Furthermore, the site was rejected by the Parish Council for allocation.
 21. Although there are differences of opinion as to whether the development would accord with policies regarding landscape and ecological impacts, it is clear that, as a matter of principle, the proposed development is not in accordance with the development plan which restricts development in the countryside outside settlement boundaries.
 22. The material considerations that were advanced, including the Housing Need Assessment, the condition of the woodland and the efficacy of the Tree Preservation Order could not be given weight for the reasons given in my decision. Only limited weight could be given to the benefits of the scheme. Considered against the clear conflict with the development plan as a matter of principle, it is clear to me that the appeal had no reasonable prospect of succeeding.
 23. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or waste expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

24. 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 Mr N Quincey shall pay to the South Downs National Park Authority, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
25. The applicant is now invited to submit to Mr N Quincey, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Nick Palmer

INSPECTOR