



Costs Decision

Site visit made on 9 March 2022

by S Edwards BA MA TCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2022

Costs application in relation to Appeal Ref: APP/Y9507/W/21/3282980 Land to the rear of Hayden Barn Cottage, Hayden Lane, Warnford SO32 3LF

- 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 A Cooper for a full award of costs against South Downs National Park Authority.
 - The appeal was against the refusal of planning permission for "Part retrospective planning permission for the change of use of land from agricultural to equestrian, and the erection of a private recreational 3-door stable, to be used in association with the dwellinghouse of 'Hayden Barn Cottage'".
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG adds that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case.
3. The applicant considers that the Authority acted unreasonably, for a number of reasons. It is firstly argued that the detailed comments from the Local Planning Authority's Head of Drainage regarding the reason for refusal constitutes fresh evidence, which has directly caused the applicant to incur additional costs in the appeal process, including the preparation of a hydrogeological report. The applicant also takes the view that the Authority has failed to produce evidence to substantiate its reason for refusal as part of the appeal process.
4. Additionally, it is alleged that the Authority has made vague, generalised or inaccurate assertions about the impact of the development, which are not supported by any objective analysis. The applicant also argues that the Authority has refused planning permission on grounds which would have been capable of being dealt with by condition.
5. Furthermore, the applicant considers that the Authority is persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable. Lastly, it is advanced that the Authority has failed to determine similar cases in a consistent manner.

6. Members of the Planning Committee are entitled to reach a different decision to the Case Officer's recommendation, but they have to do so whilst relying on substantive planning grounds. The PPG stresses that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. In this instance, the Authority has largely relied on comments made by the Head of Drainage to substantiate its concerns, though it remains unclear at which stage these particular comments were provided.
7. Notwithstanding the above, I note that the appeal development had already been considered as part of a previous appeal for a very similar proposal. The Inspector assessed the proposal and did not identify any harm, but the appeal was ultimately dismissed, because the development had not been "described in such a way so as to encapsulate the intended change of use". The appeal development which led to the current appeal was refused on grounds which would have been considered as part of the first application and subsequent appeal.
8. The PPG clearly states that persisting in objections to a scheme or elements of a scheme which the Secretary of State has previously indicated to be acceptable may give rise to a substantive award of costs against a Local Planning Authority. To my mind, that is exactly what happened here, as the Council refused to grant permission for a development which an Inspector had found acceptable, though the appeal had to be dismissed on a technicality.
9. The appeal development had been subject to a detailed assessment by the Local Planning Authority and if there were outstanding concerns, Members could have deferred their decision or considered whether the issue could have been resolved by condition(s). The Authority's decision to refuse the application caused additional delay for the development and put the appellant at additional expense in the appeal process. For these reasons, I find that the Authority has acted unreasonably in refusing planning permission for the development.
10. The applicant has referred to other planning applications to show that the Authority has not determined similar proposals in a consistent manner. There is however limited information before me in that regard and I cannot be certain that the circumstances represent a direct parallel to the appeal scheme.
11. Nevertheless, and for the reasons detailed above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A full award of costs is therefore justified in this instance.

Costs Order

12. 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 A Cooper, 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.

13. 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.

S Edwards

INSPECTOR