



Costs Decision

Site visit made on 8 March 2023

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date 4 April 2023

Costs application in relation to APP/Y9507/W/22/3301657 Greenhaven, Home Farm Road, Brighton BN1 9JS

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs K Gutteridge for an award of costs against the South Downs National Park Authority.
 - The appeal was against the refusal of planning permission for a replacement dwelling and associated landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. Unreasonable behaviour can be considered as either substantive or procedural in nature.
3. The applicant considers that the Authority behaved unreasonably by failing to objectively support its reasons for refusal at appeal. This includes confusing the terms 'incidental' and 'ancillary' and declining to further negotiate upon receipt of additional information which was provided during the application's lifecycle.
4. While I acknowledge the content of the Authority's email dated 5 January 2022, this email was not relied upon in the Authority's evidence at appeal. In addition, the applicant states that the terms 'ancillary' and 'incidental' are not formally defined in local / national planning policy, supporting text, or supporting guidance.
5. On this basis, it could be reasonably said that such terms may be applied interchangeably given the absence of a definitive definition. Nevertheless, it has not been clearly shown that the application of either use of these terms would have been determinative to the outcome of this appeal. I say this as the appeal finding principally turned on whether these outbuildings had demonstrated a domestic use rather than any nuanced ancillary or incidental use.
6. In respect to reason for refusal 5, when a planning application is made, the Authority is required to make a decision based on the information submitted. While it is good practice to work proactively and resolve / narrow areas of

dispute, the Authority is also entitled to come to a decision based on what has been submitted.

7. The Authority states the submissions, in respect to reason for refusal 5, did not overcome the specific concerns raised. While I have come to a different finding, the Authority acted in line with section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended). The decision notice provides a precise and specific reason for refusal clearly stating the development plan policies that the Authority found the proposal to conflict with.
8. Whilst I ultimately disagreed with the Authority, its assessment was not without merit. The Authority was entitled to reach its own conclusion exercising planning judgment and its position overall, in respect of the scheme and the 5 reasons for refusal, are logical and fairly substantiated.
9. As a result, having carefully considered the above, I conclude that unreasonable behaviour by the Authority, as described in the Guidance, has not been clearly demonstrated. Therefore, in my view, unnecessary or wasted expense has not been incurred by the applicant. Consequently, the application for an award of costs is refused.

N Praine

INSPECTOR