



Costs Decision

Site visit made on 3 January 2024

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Costs application in relation to Appeal Ref: APP/Y9507/W/23/3320917 Stane Lodge, Bury Gate, Bury RH20 1HA

- 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 Ben Burrows for a full award of costs against South Downs National Park Authority.
 - The appeal was against the refusal of planning permission for demolition and rebuild of the existing house and garage with tennis court (identical to proposal approved under reference SDNP/15/01953/FUL).
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. Paragraphs 047 and 049 of the PPG provides examples of types of behaviour which may give rise to a substantive award against a local planning authority. Such behaviours include not determining similar cases in a consistent manner, and lack of co-operation with the other party.
4. The applicant alleges the Authority has acted inconsistently in its decision making, having previously approved four identical planning applications, and asserts that the Authority failed to engage proactively during the planning application process.

Whether similar cases determined in a consistent manner

5. It is my understanding that the appeal proposal is identical to the scheme approved by the Authority in 2018 (hereafter "the 2018 scheme")¹. The planning permission for the 2018 scheme was unimplemented and is expired.
6. The Authority asserts that the 2018 scheme was determined against the now superseded Chichester Local Plan First Review (CLPFR) and that the development plan for the area has since materially changed through the adoption of the South Downs National Park Local Plan 2019 (SDNPLP).
7. At time of the Authority's determination of the 2018 scheme, the SDNPLP had been published for public consultation under Regulation 19 and submitted for

¹ LPA Ref: SDNP/18/04038/FUL

- independent examination. The delegated decision identifies the policies of the SDNPLP as relevant to the 2018 scheme.
8. Whilst the delegated decision for the 2018 scheme notes that applications must be determined in accordance with the development plan unless material considerations indicate otherwise, the decision makes no reference to the CLPFR and contains no assessment against its policies.
 9. Moreover, drawing on the provisions of the National Planning Policy Framework (the Framework), the relevant age of saved policies, and stage of preparation of the SDNPLP, the delegated decision afforded "considerable" weight to SDNPLP policies in determining the 2018 scheme.
 10. I have been presented with no evidence to suggest relevant SDNPLP policies materially changed following examination. Furthermore, no policies are identified as having diminished status as a consequence of any unresolved objections. Therefore, it is my interpretation that all SDNPLP policies were afforded considerable weight in the determination of the 2018 scheme.
 11. The delegated decision also had regard to the provisions of the Framework. Whilst the Framework has been revised in the intervening period, its approach to the conservation of National Parks has not materially altered. Notably, the Framework, at paragraph 182, continues to require that great weight be given to conserving and enhancing landscape and scenic beauty in National Parks.
 12. In addition, the delegated decision identifies the statutory purposes of National Parks, as defined by the Environment Act 1995, and government policy including the English National Parks and the Broads: UK Government Vision and Circular 2010, as relevant to the determination of the 2018 scheme. Therefore, the high status of protection for National Parks offered by national policy and statute existed at the time of determination of the 2018 scheme.
 13. The 2018 scheme does not appear to have been determined against now superseded policies. Rather, the evidence indicates the policies of the SDNPLP were afforded considerable weight, and extant statutory provisions and national policies for the purpose of conserving the National Park were taken into account. Therefore, the policies relevant to the determination of the appeal proposal do not appear to have materially changed from those applied in the determination of the 2018 scheme.
 14. The Authority suggests the context for the appeal site has changed since the 2018 scheme was determined through the construction of a new, large dwelling of contemporary design and appearance at Bury Gate Farm.
 15. However, the Authority granted planning permission² for the Bury Gate Farm dwelling prior to its determination of the 2018 scheme, and I understand the dwelling was under construction with works visible on site at the time of its decision. The development at Bury Gate Farm would therefore have been known to the Authority when determining both the 2018 scheme and the appeal proposal and as such I do not consider the landscape context to have materially changed during determination of either scheme.
 16. In summary, there is a high degree of similarity between the 2018 scheme and appeal proposal, and there are no other relevant factors which materially alter

² LPA Ref: SDNP/16/05874/FUL

the context within which the appeal proposal is determined. Therefore, the Authority failed to determine similar cases in a consistent manner and, on this basis, acted unreasonably.

Whether adequate co-operation with other parties

17. The applicant asserts that the Authority failed to engage in any meaningful way, including not responding to suggestions about removing the tennis court, and not raising its concerns regarding the proposal until more than six months after the application was submitted and four months after the statutory determination period.
18. The Authority refers to email correspondence between the parties. However, copies of those emails have not been provided. I have no evidence before me to refute the applicants claims. Since it has not been demonstrated that proactive engagement took place, I must conclude that unreasonable behaviour occurred in this regard.
19. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is warranted.

Costs Order

20. 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 Mr Ben Burrows, 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.

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.

E Dade

INSPECTOR