



Costs Decision

Hearing Held on 22 October 2024

Site visit made on 22 October 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Costs Application in relation to Appeal Ref: APP/Y9507/C/23/3323866 The Boneyard, Drove Road, Brighton & Hove BN2 6AJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Roger Rowell for a partial award of costs against South Downs National Park Authority.
 - The hearing was in connection with an appeal against an enforcement notice alleging the material change of use of the land to a mixed use comprising a commercial equestrian business use for livery and the breeding of showjumping horses and the placement and residential occupation of one mobile home as well as various forms of operational development.
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Decision

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

The submissions for the Applicant

2. The applicant contends that the Park Authority did not act in accordance with guidance, namely: The Procedural Guide: Enforcement Notice Appeals – England (September 2024) and National Planning Policy Guidance on Enforcement and Post-Permission Matters (August 2024).
3. The thrust of the application, which is for a partial award of costs in respect of the costs associated with the enforcement appeal, is that the Park Authority acted unreasonably during the appeal process. The Enforcement Notice was also neither expedient nor necessary in the circumstances. It was issued 5 months after the refusal of planning permission and at a time when the appeals process was underway to deal with the breaches specified in the notice, and which could quite properly have been dealt with at that appeal.
4. The breaches of planning control were also not so severe to warrant or justify the additional issue of the notice. It was therefore not expedient or in the public interest to issue the notice. The Applicant has also met with the Park Authority to try and avoid an appeal. With no further communication the notice was then issued. The Park Authority therefore did not engage in constructive discussions or act proportionately.
5. There was no urgent need to issue a notice some 5 months after the refusal of planning permission and in the knowledge that a planning appeal was being prepared. The notice simply complicated the appeal process and added unnecessary costs.

The response by the South Downs National Park Authority

6. The Park Authority has consistently sought to engage in constructive discussions and allowed the submission of a retrospective planning application. It also held off issuing a notice for an extended period. Advice was provided on what matters a successful application would need to address, however the application did not address the concerns raised. It is also unclear why the Applicant was unwilling to formally seek advice. It was also evident that further discussion was then unlikely to result in resolution given the difference in respective positions.
7. The breaches of planning control were extensive and harmful and cannot be addressed by conditions alone. The issue of the enforcement notice was therefore entirely justified. It is normal practice for a notice to be issued soon after the planning decision, to avoid further delays and reduce the period of uncertainty for all parties concerned.
8. The Applicant carried out extensive unlawful works, entirely at his own risk. Until just prior to the Hearing, the Applicant did not seek to amend the proposal to address concerns of the Park Authority. The Applicant's actions resulted in a refused retrospective planning application and the issue of an Enforcement Notice, and any resultant costs incurred are entirely his own responsibility.

Inspector Reasons

9. The Planning Practice Guidance 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.
10. The Applicant has undertaken considerable works and taken-up residential occupation at the site without planning permission. An opportunity was then provided for the submission of a planning application. There then appears to be a period of some months following that refusal where neither an appeal was lodged, nor the offer of formal pre-application advice taken. Even if I am wrong, the Park Authority has however met with the Applicant. I am consequently satisfied that the Park Authority has engaged in a constructive manner.
11. The subsequent submission of an appeal against the refusal of planning permission did not then preclude the Park Authority from issuing an enforcement notice, even if it was some 5 months later. This is not specifically contrary to guidance that has been brought to my attention. Indeed, it would actually appear to be entirely reasonable as it can avoid further delays and reduce uncertainty and costs, as all matters can be dealt with during a single Hearing expeditiously. I am then not persuaded that the issuing of the notice unduly complicated the appeal or appeal process.
12. Accordingly, and given the numerous breaches of planning control, it was not unreasonable to issue the notice. Indeed, it was a proportionate response that was in the wider public interest, particularly as the site is within a National Park. The notice then gave reasons as to why it was considered by the Park Authority to be expedient, which were cogent and grounded by planning policy.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR