
Costs Decision

Site visit made on 16 November 2016

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 December 2016

**Costs application in relation to Appeal Ref: APP/N1160/Q/16/3145842
Land adjacent to Greenacres Care Centre, 12 Pearn Lane, Plymouth, PL3 5JF**

- The application is made under the Town and Country Planning Act 1990, sections 106B, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Plymouth City Council for a full award of costs against Mr P Gerry.
 - The appeal was against the failure of the Council to determine that a planning obligation should be discharged.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. The thrust of the Council's claim for costs is that it considers the appeal to be entirely unnecessary and could simply have been avoided. It explains that prior to the submission of the application, and during the application process itself, it consistently advised the appellant to consider an application to modify or vary the Section 106 (S106) agreement, as opposed to seeking to fully discharge it. The Council gave this advice as it considered that a number of clauses within the S106 agreement still serve a useful purpose and are integral to the ongoing life of the original planning permission.
4. This advice was not taken up by the appellant, who sought, instead to have the S106 agreement fully discharged. The Council maintains that this appeal process has resulted in extensive officer time being spent attending meetings and undertaking general case management work, including the writing of an appeal statement, at a time when Council budgets are being increasingly stretched. In these circumstances the Council considers it reasonable to claim for a full award of costs.
5. However, as the appellant rightly says, Section 106A of the Town & Country Planning Act 1990 allows an applicant to apply to the Local Planning Authority (the Council) to modify or discharge a planning obligation. In this case the Council indicated that it may have been willing to modify the S106 agreement, but was not willing to discharge it in its entirety. But whilst that may well have been the Council's position, the appellant was quite entitled to continue to

submit an application for a planning obligation to be discharged under the aforementioned Section 106A, without the threat of a costs claim.

6. In this case I share the appellant's view that he has followed the proper appeal procedure, and that no deadlines have been missed. The fact that I have not been persuaded by the appellant's case does not mean that there has been any unreasonable behaviour on the appellant's part.
7. Moreover, the Council has not provided any real justification for its contention that the appeal process has entailed "extensive officer time" over and above that which it would typically expect to expend carrying out its normal duty in defending an appeal.
8. Taking all the above points into account I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated. The application for an award of costs is therefore refused.

David Wildsmith

INSPECTOR