The Planning Inspectorate

Costs Decision

Site visit made on 1 May 2019

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2019

Costs application in relation to Appeal Ref: APP/H1840/Q/18/3202454
Coach House Farm, Cheltenham Road, Broadway WR12 7BY

- 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 Mr & Mrs Maymon for a full award of costs against Wychavon District Council.
- The appeal was against the refusal to discharge a planning obligation.

Decision

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

Procedural Matter

2. I have taken into account the Government's Planning Practice Guidance (PPG) in reaching my decision.

Reasons

3. The PPG 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.

4. The applicants claim that the Council acted unreasonably by failing to comprehend the legal nature of the application, instead dealing with it as though it were a planning matter; relying on irrelevant evidence resulting in a failure to determine the application correctly; failing to deal consistently with cases involving the discharge of section 106 agreements (s106s); refusing to release documents relating to the discharge of the s106 at Penponds, forcing the applicants to make a Freedom of Information request to obtain the relevant documents, and then only releasing limited and selected documents.

5. In respect of the legal nature of the case, as set out in my appeal decision, it is clear from the evidence that the original planning permission, Ref W/01/01880/PN, has not been implemented. The Council claims that it remains to be demonstrated as to whether it could still be legally implemented. However, as I found in my appeal decision and without any substantive evidence to the contrary, that original permission is time expired which is a fundamental factor. The planning obligations concerned could therefore not be triggered. Furthermore, the Council has failed to provide sufficient substantive evidence to demonstrate that there would be any other scenarios whereby that original permission could be implemented or would need to be proven to still be valid.

6. Furthermore, I found in my appeal decision that there were differences between the appeal case and that relating to another appeal at Headley Down, fundamentally in terms of the original permission having been implemented in that other case. In the case at hand there is no practical basis for enforcing the s106 should the Council choose to do so.

7. In respect of the Penponds case, the Council states that in hindsight it should have left the planning obligation concerned in place. It states that its decision in respect of the current appeal case was not bound to follow the same procedure as for that other case. Whilst that may be the case, I have found that there was no substantive basis for refusing the application concerning this appeal.

8. Based on the submissions, it is apparent that the Council provided all of the information that it was able to in relation to the appellants' requests for information relating to the Penponds case. However, this does not deflect from my fundamental finding that, for the above reasons, there is no clear justification for the Council to have refused the application relating to this appeal or to pursue the appeal.

9. I therefore find that the Council behaved unreasonably in determining the application and in continuing to defend its decision at appeal and that, therefore, the applicants' costs in pursuing the appeal were unnecessarily incurred and wasted. For this reason, a full award of costs is justified.

Costs Order

10. 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 Wychavon District Council shall pay to Mr & Mrs Maymon 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.

11. Mr & Mrs Maymon are now invited to submit to Wychavon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dawe

INSPECTOR