
Costs Decision

Site visit made on 10 September 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Costs application in relation to Appeal Ref: APP/V3310/W/19/3229178 Land north of Walrow, Walrow, Highbridge TA9 4AB

- 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 Sedgemoor District Council for a full award of costs against Mr Thorner of Flower and Hayes Ltd.
 - The appeal was against the refusal of the Council to grant planning permission for erection of 47 dwellings, with garages, formation of accesses and ancillary works.
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Decision

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

Reasons

2. 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. The applicant (the Council) claims that the respondent (the appellant) acted unreasonably on procedural grounds which can be summarised as involving a lack of co-operation in preparing a planning obligation, leading to wasted time and expense.
4. In point of fact the Council did not refuse planning permission on the basis of the lack of a planning obligation. Therefore, whether or not an agreement had been reached between the parties during the course of the appeal, this would not have had any bearing on the legitimacy of the appeal itself being lodged.
5. The extent of discussions between the parties prior to the appeal is unknown, though some communication clearly had taken place. Indeed, the officer report appeared to anticipate the provision of a planning obligation between the date of the Committee meeting and the issuing of a decision. In this context, discussion during the course of the appeal was a continuation of that which had previously occurred, and was not therefore confined to the appeal, or specifically related to the appeal process itself.
6. I appreciate that the appellant's decision to submit a pre-existing Unilateral Undertaking (the UU) rather than completing joint work on a Section 106 Agreement (the S106) gave rise to the Council being required to make comments during the appeal. The appellant was however at liberty to do this, and given that the Council had prior familiarity with the UU, making such

comments cannot have been onerous or therefore involved a level of expense that was clearly quantifiable.

7. The appellant's subsequent request to submit a modified version of the S106 showed a clear lack of consistency. Nonetheless it offered some prospect of agreement being reached between the parties, thus serving the interests of each.
8. The Council's provision of its own version of the S106 at this stage was undertaken on its own initiative, and not, apparently, at the appellant's request. Any expense this involved above and beyond that already incurred, was therefore the Council's responsibility.
9. The appellant subsequently submitted a S106, as he had indicated he would. Though containing defects, the fact that this otherwise differed from the Council's simply serves to underline the fact the parties had not reached an agreement on certain contested matters. Indeed, none of the evidence set before me indicates that an agreement was certain, even had the original discussions continued without interruption.
10. I acknowledge that the comments made by the Council on this S106 were in addition to those made on the UU. However, these would have been otherwise required in the event that the original discussions ended in submission of a similar S106. Thus, additional expense was not obviously incurred.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Conclusion

12. For the reasons set out above I conclude that the application for an award of costs should be dismissed.

Benjamin Webb

INSPECTOR