



Costs Decision

Site visit made on 14 September 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Costs application in relation to Appeal Ref: APP/B1740/W/21/3274581 Kingfisher Park, Salisbury Road, Blashford, Ringwood, Hants BH24 3NX

- 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 Kingfisher Park Management Ltd for a full award of costs against New Forest District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for barrier/gate at Kingfisher Park (vehicular only).
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Decision

1. The application for costs is refused.

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. Parties in planning appeals and other planning proceedings normally meet their own expenses, however, unreasonable behaviour can occur and may either relate to the procedural aspects of the appeal, or the substantive aspects – relating to the issues arising from the substantive merits of the case.
3. In this instance, the applicant seeks to claim that the Council have behaved unreasonably by failing to determine the application when it was possible to grant permission and impose an instructive planning condition that would achieve the same outcome as the S106. The applicant also highlights that variation of the S106, as pursued by the Council, would be futile because the Council's obligations therein remain undischarged.
4. As set out in the appeal decision, I agree that the obligations in the S106 and Deed of Variation (DoV) remain relevant despite the age of these documents and that aspects of them remain unfulfilled. Granting a planning permission would not simply make them disappear, though it would possibly force a decision that they would no longer serve a useful planning purpose.
5. I note also the Council's claim that the use of an instructive planning condition would not be reasonable as it would seek to confer public access to land outside of the planning application site. My view is the same and that the condition could not achieve the same outcome as the S106 and DoV, having regard to the tests for the use of planning conditions set out in the National Planning Policy Framework and further advice set out in the PPG.

6. As the grant of planning permission without resolution of the existing S106 and DoV would otherwise result in conflicts, and in the absence of a new equivalent securing the same, my decision has found in favour of the Council.
7. The Council was clearly able to determine the application, which it agreed had been validly made, rather than leave it unresolved indefinitely. The Council highlights this through having provided its putative reason for refusal and further evidence to support a position of refusal. Had such a conclusion been reached, there is a chance that it may have avoided the applicant's pursuit of the non-determination appeal.
8. However, I note the applicant's anticipation that the Council would approve the appeal application, subject to resolution of the S106, hence the prolonged period of negotiation between the parties. An abrupt refusal of the application was clearly not desirable from the applicant's perspective, having invested such time and costs in working collaboratively with the Council in an attempt to resolve the outstanding matters. Additionally, given the applicant's view that a suitably robust alternative solution existed, I cannot conclude that the appeal was avoidable had it been refused in any event.
9. Consequently, whilst I find that procedurally, the Council was capable of refusing the appeal application, the reasons for not doing so were understandable, and that even if it had done, the appeal was not likely to have been avoided in any event. For these reasons, and having regard to all other matters raised, a full or partial award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR