
Costs Decision

Site visit made on 23 January 2014

by **Gary Deane BSc (Hons) DipTP MRTPI**

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

Decision date: 14 February 2014

Costs application in relation to Appeal Ref: APP/N1350/A/13/2206805 9A Tees Grange Avenue, Darlington DL3 8BL

- 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 Mr S G Edwards for a full award of costs against Darlington Borough Council.
 - The appeal was made against the refusal of planning permission for the construction of a single storeyed annexe extension sited to the north west of the existing dwelling.
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Decision

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

Reasons

2. Circular 03/2009 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 Officer's report recommended that planning permission should be granted in this case. Paragraph B20 of the Circular makes it clear that planning authorities are not bound to accept the recommendations of officers. However, if the professional advice of officers is not followed, authorities are expected to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so, the Circular advises that costs may be awarded against the authority.
 4. In this instance, the Council considered that the proposal, if permitted, would be detrimental to the amenity of neighbouring residents. In reaching this conclusion, and by not submitting a statement of case at the appeal stage, the Council has relied primarily on its single reason for refusal and the Officer's report to substantiate its case.
 5. The reason for refusal states that the size, scale and the proposed use would be harmful to the amenity of residential property. It is unclear from this statement exactly what harm would be caused as a consequence of these particular aspects of the proposal and to whom. The Officer's report also offers few clues as to precisely how the living conditions of the occupiers of nearby properties would be harmed were the proposal to proceed and how this would differ from
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- the current residential use of the site. To the contrary, the Officer's report considers in some detail the effects of the proposal on residential amenity, especially in terms of light, outlook, privacy and the use of the outdoor space, and found the development to be acceptable.
6. The Council's reply to the costs application adds that the level of activity generated by the proposal in terms of coming and going of people and a more intensive use of the amenity space would be harmful. Again, no further explanation is given in the Officer's report of precisely how these considerations give rise to harm and who would be affected.
 7. Assessing matters such as the effect of the proposal on the living conditions of the occupiers of adjoining property can be partly subjective. It is inevitable that opinion will vary. However, where the outcome of a planning decision hinges on an assessment of such issues, it is reasonable to expect realistic and specific evidence to be put forward regarding the consequences of the proposal. The Circular notes that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in an award of costs.
 8. The proposal has attracted local opposition. Even so, the Circular advises that planning authorities should still make their own objective appraisal and ensure that valid planning reasons are stated and substantial evidence provided. While the views of local residents should be fully considered and taken into account when determining a planning application, the Circular advises that the extent of local opposition is not, in itself, a reasonable ground for resisting development. The Circular states that planning authorities will be at risk of an award of costs for unsubstantiated objections where they include valid reasons for refusal but rely almost exclusively on local opposition to support the decision.
 9. With regard to other matters raised by the appellant, the proposal sought to introduce a new building for residential use on a site in a backland location. As such, I consider that Policy H13 of The Borough of Darlington Local Plan, which is cited in the reason for refusal, is relevant to the proposal. There is nothing in that policy or the supporting text to indicate that it should only apply to new dwellings or that it should not apply if such development replaces a curtilage building. Reference is also made by the appellant to paragraph B19 of the Circular, which primarily concerns design, which was not at issue in this appeal.
 10. Nevertheless, I have little doubt that the Council has behaved unreasonably because it has failed to clearly show why the development should not proceed and has not substantiated the reason for refusal at appeal. The Council's evidence does not provide a respectable basis for its stance. To my mind, the Council has prevented development that should clearly have been permitted. As a result, the appellant has had to recourse to appeal and incur the associated costs of doing so, which, in my opinion, could have been avoided.
 11. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 Darlington Borough Council shall pay to Mr S G Edwards, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Darlington Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Gary Deane

INSPECTOR

