



Costs Decision

Hearing held on 17 June 2010

Site visit made on 17 June 2010

by **Wenda Fabian** BA Dip Arch RIBA IHBC

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

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Decision date:
22 July 2010

Costs application in relation to Appeal Ref: APP/N1350/A/10/2121393 land at Southfields, Snipe Lane, Darlington DL2 1QB

- 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 Robert Smith for a partial award of costs against Darlington Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a private gypsy site for 1 pitch to include an amenity block and hardstandings for 1 static caravan or mobile home, 1 touring caravan and parking for 2 private vehicles.
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Decision

1. I allow the application for costs in the terms set out below.

The submissions for Mr Robert Smith

2. The costs application was submitted in writing, in terms of paragraphs A3, B15, B17, B20, B23 and B24 of Circular 03/2009. The following additional points were made orally. The vehicle trip numbers agreed at the hearing were significantly different to those submitted in the Council's statement.

Response by Darlington Borough Council

3. The Council's response was made in writing, no additional points were made.

Conclusions

4. 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. At Part A of the Annex to the circular, paragraph A3 aims to ensure that planning authorities rely on reasons for refusal which stand up to scrutiny.
 5. The application is for a partial award of costs in respect of the second reason for refusal. This related to the non-compliance of the proposal with LP policy H21 in terms of highway safety at the junction with the A66 trunk road. In its statement the Council asserted that the proposal would generate 20 or more additional vehicle movement per day, but provided little justification for this assessment. At the hearing the Council's highway officer agreed that comparison of a single gypsy pitch with a single dwelling is reasonable and that this would generate only around 6 movements per day, a fundamentally different assessment.
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6. In its statement, when assessing visibility at the road junction, the Council quoted required distances but made no reference to any published standards. The measurements provided in its statement were difficult to interpret; they made no reference to standard 'x' and 'y' visibility splay measurements and at the site visit the Council was unable to demonstrate how the figure of 125m was derived. The Council made no reference to the *Design Manual for Roads and Bridges* standards subsequently accepted as appropriate at the hearing (as referred to in my main decision), or to the suggested relaxation provided in these standards for the 'x' distance visibility splay requirements, which I have found to be appropriate in this case.
7. The Council relied on its consistent refusal of other development proposals along the lane on the basis of harm to highway safety. However, the Council's highways officer was unable to explain why, in this context, the stable block on the appeal site was authorised in 2008 or how the traffic generated by an equestrian or agricultural use on the lane differs from the appeal proposal, in this respect.
8. In relation to highway safety matters at the junction, the Council also relied heavily on the assessment made by a previous inspector in a 2003 appeal decision. It did not provide an assessment of the current circumstances or the individual merits of the appeal proposal, either in its statement or at the hearing. As set out in my main decision, I have found these to be different in this case.
9. In each of these respects the Council's second reason for refusal fails to stand up to scrutiny. Little evidence has been presented and, as set out in my decision, the Council has failed to convince me that highway safety considerations are a sufficient basis to prevent the development in terms of paragraph B15. Nor have reasonable grounds been demonstrated, in terms of paragraph B20, for taking a decision contrary to the recommendation of the Council's officer in this respect.
10. Furthermore, paragraph B23 expects planning authorities to give thorough consideration to relevant representations from statutory authorities. The highway authority for the A66 trunk road is the County Council and it confirmed, in response to consultation on the proposal that it did not object on the basis of highway safety. The Council produced little rational explanation of the position it has taken in rejecting this advice.
11. Overall, I consider that the Council failed to produce substantial evidence to support its second reason for refusal or to show why it disregarded the advice of its own officer and the statutory consultee. In these circumstances the need for a hearing in relation to the second reason for refusal could have been avoided and the appellant has been put to unnecessary expense in preparing evidence to contest the second reason for refusal and the time spent at the hearing in relation to it.
12. I, therefore, find that unreasonable behaviour resulting in unnecessary expense, as described in paragraph A12 of the Annex Circular 03/2009 has been demonstrated and that a partial award of costs is justified.

Costs Order

13. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Darlington Borough Council shall pay to Mr Robert Smith, the costs of the appeal proceedings in so far as they related to preparing evidence and attending the hearing in respect of the second reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
14. 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.

Wenda Fabian

Inspector

