



Costs Decisions

Site visit made on 9 July 2019

by Beverley Wilders BA (Hons) PgDurt MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2019

Costs application in relation to Appeal Ref: APP/N1350/W/19/3223152 (Appeal A)

Land at rear of High Stell, Middleton St George, Darlington DL2 1HS

- 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 Craig Peterson (Homes by Carlton (MSTG1) Limited) for a full award of costs against Darlington Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
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Costs application in relation to Appeal Ref: APP/N1350/W/19/3223154 (Appeal B)

Land at rear of High Stell, Middleton St George, Darlington DL2 1HS

- 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 Craig Peterson (Homes by Carlton (MSTG1) Limited) for a full award of costs against Darlington Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
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Costs application in relation to Appeal Ref: APP/N1350/W/19/3223155 (Appeal C)

Land at rear of High Stell, Middleton St George, Darlington DL2 1HS

- 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 Craig Peterson (Homes by Carlton (MSTG1) Limited) for a full award of costs against Darlington Borough Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
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Decisions

1. The applications for awards of costs are allowed in the terms set out below.

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. Paragraphs 046 to 049 set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples of unreasonable behaviour by a local planning authority includes preventing or delaying development which should clearly be permitted; failure to produce evidence to substantiate each reason for refusal at appeal; vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; not determining similar cases in a consistent manner and refusing to approve reserved matters when the objections relate to issues that should already have been considered at outline stage.
4. The appellant's case is essentially that in refusing the applications for the same sole reason relating to the proposed accesses, the Council failed to properly assess the applications and sought to exceed its powers in insisting that the development proceed with two access points rather than one for the first phase as was always intended and as approved by discharge of condition application 18/01215/CON. In addition, the appellant states that the Council's decisions run contrary to pre-application planning advice and to responses received from the Council's Environmental Health and Highway departments who raised no objections to the submitted details. Finally, the Council's refusal of the details pursuant to condition 14 of 15/00976/OUT due to a lack of a response from the Local Flood Authority and refusal of details relating to condition 18 of the same permission notwithstanding no objection from the Council's Ecologist, was unreasonable.
5. As can be seen from my decisions, I have allowed the appeals in relation to Appeals B and C and have partially allowed Appeal A insofar as it relates to the highway related conditions (10 and 11). From the evidence before me, it seems that the phasing of development and the use of the Grendon Gardens access only for the first phase of the development was approved by the Council in January 2019 under application reference 18/01215/CON. It also appears that no objections were raised by the Council's Environmental Health department in respect of the proposed phasing arrangements and the associated construction management plan insofar as it relates to the first phase of development. The evidence also shows that there were no highway capacity objections to the use of the Grendon Gardens access and no substantive highway or pedestrian safety objections to the submitted details with the Highway department acknowledging that in considering the discharge of the conditions, the primary concern related to living conditions.
6. The Council did not submit an appeal statement in response to the appellant's evidence and has not submitted any evidence to dispute the appellant's claim that the phasing of development has now been approved. Although the appeals were submitted after the Council approved the phasing details under application reference 18/01215/CON, in any event it appears from the evidence that the reserved matters permission acknowledged and accepted that the development would be phased and following discussion with Officers that the phasing details proposed would be acceptable.
7. Whilst Officer advice is not binding, in refusing the applications the Council must produce evidence to substantiate each reason for refusal at appeal. Having regard to the Council's Report submitted with the appeal and to the fact that no appeal statement was submitted by the Council, I do not consider that

the Council has produced sufficient evidence to substantiate the reasons for refusal as they relate to access concerns. In addition, no evidence has been produced to substantiate the refusal of details in relation to conditions 14 and 18 of 15/00976/OUT, with details submitted in relation to condition 18 being refused despite apparently being acceptable to the Council. Although I reach a different conclusion to the Council in respect of condition 18, this does not alter the fact that had the Council approved the submitted details pursuant to that condition, the appellant would not have had to appeal its decision in that respect.

8. Though it is clear that there have been ongoing concerns in relation to the proposed access arrangements for the approved development, I see nothing before me to suggest that approval of the submitted details would alter the fact that two accesses were approved and are proposed to serve the residential development. Under these circumstances I find that the Council's refusal of the details submitted to be unreasonable.
9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has been demonstrated. For this reason, and having regard to all matters raised, awards of costs are 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 Darlington Borough Council shall pay to Mr Craig Peterson (Homes by Carlton (MSTG1) Limited), the costs of the appeal proceedings described in the headings of these decisions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

Beverley Wilders

INSPECTOR