



# The Planning Inspectorate

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Your Ref:

Our Ref: APP/N1350/W/18/3212132

Date: 2 August 2019

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Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)  
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 AND 322  
LAND OFF NEASHAM ROAD, MIDDLETON ST GEORGE, DARLINGTON: APPEAL BY  
GLADMAN DEVELOPMENTS LTD: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspectorate's correspondence of 12 March 2019 confirming the withdrawal of the above appeal. The appeal was against the Council's failure to give notice of its decision within the statutory period for the application outline planning permission for the erection of up to 280 dwellings, 60 bed care home (Use Class C2) with community park and public open space, landscaping and sustainable drainage system (SuDS). All matters reserved except for means of two vehicular access points to be provided from Neasham Road, on land described above.

2. This letter deals with your Council's application for an award of costs against the appellants, made in correspondence of 8 and 29 April 2019. Gladman Developments Ltd responded on in correspondence of 23 April 2019. As these representations have been disclosed to the parties it is not proposed to summarise them in any detail. They have been carefully considered.

## Summary of decision

3. The formal decision and costs order are set out in paragraphs 14 and 15 below. The application succeeds to the extent that a partial award of costs is being made against the appellants.

## Basis for determining the costs application

4. In planning appeals, the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are only awarded on the grounds of "unreasonable" behaviour, resulting in any wasted or unnecessary expense. The application for costs has been considered by reference to the Planning Practice Guidance on awards of costs (as

published on the Gov.uk website under "Appeals"), the appeal papers, the correspondence on costs and all the relevant circumstances.

## **Reasons for the decision**

5. All the available evidence has been carefully considered. The decisive issue is whether or not the appellants acted unreasonably by withdrawing the appeal when they did, causing the Council to incur wasted or unnecessary expense in preparing to resist it at the cancelled Inquiry. The guidance in paragraph 054 of the guidance is particularly relevant. The sequence of events leading to the submission and subsequent withdrawal of the appeal has been carefully examined.

6. The appeal was received by the Inspectorate on 20 September 2018. The Inspectorate's letter of 11 October 2018 informed the parties that the appeal would be dealt with by the Inquiry procedure. The letter to the appellants warned of the risk of costs being awarded if an appeal is withdrawn without good reason and directed them to the costs guidance which could be found on GOV.UK. The parties were notified on 5 November 2018 that an Inquiry had been arranged to take place on 8 May 2019. The Council's statement was received by the Inspectorate on 22 November 2018. The Council's supplementary statement of case was received on 25 January 2019. The appeal was withdrawn on 12 March 2019.

## **Conclusions**

7. Paragraph 054 of the PPG warns that, if an appeal is withdrawn without any material change in the planning authority's case or any other material change in circumstances, relevant to the planning issues arising on the appeal, appellants are at risk of an award of costs against them if there are no other exceptional circumstances and the claiming party can show that they have incurred quantifiable wasted expense as a result. The Secretary of State has to decide whether the appellants had good reason for the withdrawal due to a material change in circumstances relevant to the planning issues arising on the appeal, or whether there are any other exceptional circumstances.

8. In this case, the appeal was withdrawn some 6 months after it was submitted. The appellants' decision to withdraw the appeal when they did, needed to be weighed against the risk of an award of costs. This risk was brought to the appellants' attention, in procedural correspondence from the Inspectorate. The view is taken that the appellants would, or should, have been aware that by withdrawing the appeal when they did the other parties in the appeal would have incurred costs in preparing to resist it at the cancelled Inquiry.

9. It appears from the evidence that the appellants decided to withdraw the appeal after they received the Council's supplementary statement of case, which included 8 putative reasons for refusal. They contend that they reviewed their case as a result, which entailed seeking the views of consultants and Counsel. They also assert that since the appeal was submitted, the Council issued a further land supply assessment and a revised National Planning Policy Framework (NPPF) was issued. It is understandable that in appeals against the Council's failure to make a decision, that it is difficult for appellants to make their case until they have seen the Council's putative reasons for refusal. However, in this case, although the Council did not submit those reasons until their supplementary statement of 25 January 2019, the Secretary of State takes the view that it was clear from the original statement what their concerns were. The statement identifies the relevant issues of concern and the relevant development plan and core strategy policies. Therefore, it is reasonable to expect the appellants to have reviewed their case and to seek the necessary advice from that point, rather than wait until the Council had submitted a supplementary statement.

10. The Secretary of State considers the Council's original statement amounted to a material change of circumstances and he would not have considered it unreasonable behaviour for the appellants to have withdrawn the appeal after receipt of it. He does not consider the Council's supplementary statement amounted such a material change of circumstances for the reasons explained above.

11. The appellants also refer to the Council issuing a further housing land supply assessment and the issue of the revised NPPF in February 2019 as reasons for withdrawing the appeal. However, they have not explained precisely what it was about either of these publications that caused them to reach the conclusion their chances of success on appeal had diminished, such that the appeal should be withdrawn.

12. The overall conclusion reached is that the Secretary of State takes the view that the Council's original statement of 22 November 2018, which was sent to the appellants by e-mail on that date, amounted to a material change of circumstances in relation to the planning issues arising on the appeal to justify the appellants' decision to review their case and to withdraw the appeal. However, he is not satisfied the appellants withdrew the appeal promptly. This amounts to unreasonable behaviour, which caused the Council to incur wasted or unnecessary expense in preparing to resist the appeal at the cancelled Inquiry in accordance with the set timetable. An award of costs will be made accordingly.

13. As to the extent of the award, the view is taken that two weeks after receipt of the Council's statement is a reasonable period of time for the appellants to have reviewed their case and sought the advice they considered necessary. It is therefore considered that a partial award of costs from 6 December 2018 (inclusive) is justified.

## **FORMAL DECISION**

14. For these reasons, it is concluded that a partial award of costs against the appellants, on grounds of "unreasonable" behaviour resulting in wasted or unnecessary expense, is justified in the particular circumstances.

## **COSTS ORDER**

15. Accordingly, the Secretary of State for Housing, Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 322 of the Town and Country Planning Act 1990 and all other powers enabling him in that behalf, **HEREBY ORDERS** that Gladman Developments Ltd shall pay to Darlington Borough Council their costs incurred in the appeal process; limited to those costs incurred from 6 December 2018 (inclusive); such costs to be assessed in the Senior Courts Costs Office if not agreed.

16. The Council are now invited to submit to Mr Stuart Carvel of Gladman Developments Ltd, details of those costs with a view to reaching agreement on the amount. A copy of this letter has been sent to him.

Yours faithfully

*K McEntee*

KEN McENTEE  
Authorised by the Secretary of State  
to sign in that behalf