
Costs Decision

Site visit made on 22 February 2021

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2021

Costs application in relation to Appeal Ref: APP/T2215/W/20/3251527 Warner House, Cotton Lane, Stone, Dartford DA9 9BF

- 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 J Perfitt for a partial award of costs against Kent County Council.
 - The appeal was against the refusal of planning permission for a detached house.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance's section on appeals (the PPG) advises that, irrespective of the outcome of an appeal, 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.
3. An award of costs is sought by the applicant from Kent County Council (KCC), acting in its capacity as the local highway authority. That application has been made on a substantive basis and concerns the highway safety reason for refusal (the R/R). The applicant contends that it was unreasonable for there to have been a highway safety R/R and that KCC's appeal evidence has not substantiated that R/R.
4. The applicant has also made an application for costs from Dartford Borough Council concerning the third R/R and that application is subject to a separate costs decision.
5. The level of forward visibility for drivers emerging onto Cotton Lane from the access that would serve the proposed development would be less than required by KCC. However, in determining the appeal I have found that the level of forward visibility would not be so deficient as to make the additional use of the access unsafe, with no evidence having been presented demonstrating that the existing access' use is inherently dangerous. In that regard I consider it somewhat telling that KCC provided no empirical evidence supporting its contention that the additional use of the access would adversely affect highway safety.
6. I have also found that KCC has failed to pay adequate regard to the fact that some traffic calming measures have been approved by it and will be provided

in association with the implementation of the planning permission for 16 new houses located a little to the west of the appeal site. In determining the appeal, I have found KCC's proposition that those traffic calming measures would be unlikely to reduce the speed of traffic within the vicinity of the access to be unpersuasive.

7. KCC in responding to the costs application has drawn attention to an appeal decision for the formation of an access in Platt¹. However, the Platt appeal concerned the formation of a new access onto the A25 with no turning area. The A25 being a road with a higher classification than Cotton Lane and referred to as having an annual average daily traffic flow ranging between 11,440 and 12,800 vehicles. The circumstances of the Platt appeal are not comparable with the appeal before me and I consider that the outcome of the Platt appeal does not substantiate the inclusion of the first R/R. In a similar vein I consider the Heathfield appeal decision² referred to by KCC does very little to justify the inclusion of the first R/R, because the circumstances of that case were again very different to the appeal before me.
8. For the reasons I have given in the appeal decision, when regard is paid to the site specific circumstances of this case, I consider KCC's appeal case has failed to demonstrate why the additional use of the access would cause 'significant harm to highway safety'. I am therefore of the view that KCC's evidence has fallen a long way short of substantiating the first R/R's inclusion and that the applicant in responding to it incurred unnecessary and wasted expense.
9. While I have found that applicant has incurred unnecessary and wasted expense, the issue raised in the first R/R was not particularly complex. Notwithstanding that the applicant's highway consultant made extensive written submissions and much of that material did not assist my consideration of the appeal. For example, the parts of the highway appeal statement addressing stopping distances and the use of mirrors in the street, together with much of the 'Rebuttal – to KCC submission', I found to be of very little assistance in considering whether or not the additional use of the access would be unsafe. I consider no more than around half of the highway consultant's submissions aided my determination of the appeal.
10. In relation to the first R/R the applicant instructed a highway consultant to make his appeal case. Notwithstanding that paragraphs 6.28 to 6.39 of the 'Grounds of Appeal' at some length address the first R/R. For the avoidance of doubt, I consider that the aforementioned paragraphs of the Grounds of Appeal should not be subject to any award of costs allowed against KCC. That is because I found the aforementioned submissions did very little to aid my understanding of the applicant's case when read alongside the applicant's highways evidence, the latter itself being somewhat excessive in length.

Conclusion

11. Having regard to the provisions of the PPG, most particularly paragraphs 028, 030 and 049 (the second bullet point), I conclude that it was unreasonable for the decision to refuse planning permission to have included the first R/R. The inclusion of the first R/R resulted in the applicant incurring unnecessary and

¹ APP/H2265/W/19/3230565

² APP/C1435/W/19/3235334

wasted expense in responding to that R/R. An award of costs against KCC is therefore justified. That said, as explained above, I am of the view that KCC should not be required to pay all of the costs incurred by the applicant in responding to the first R/R. I consider the award of costs against KCC should therefore be limited to only half of the costs incurred by the applicant in instructing the highway consultant to respond to the first R/R.

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 Kent County Council shall pay Mr J Perfitt, the costs of the appeal proceedings relating to the first reason for the refusal of planning permission, limited to no more than half of the costs incurred by Mr Perfitt through the highway consultant fulfilling the instruction to respond to the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Kent County 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.

Grahame Gould

INSPECTOR