



## Costs Decision

Site visit made on 7 June 2022

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 June 2022**

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### **Costs application in relation to Appeal Ref: APP/X1355/W/22/3296969 Land to the south of 76 to 80 Newholme Estate, Station Town TS28 5EW**

- 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 Stephenson for a full award of costs against Durham County Council.
  - The appeal was made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal was against the refusal of planning permission for the change of use of building to residential property without complying with condition 5 attached to planning permission Ref DM/20/02300/FPA, dated 28 October 2020.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Government's Planning Practice Guidance (PPG) 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. Claims can be procedural-relating to the process; or substantive-relating to the issues arising from the merits of the appeal.
3. Examples of substantive claims are set out in paragraph 49 of the PPG and of relevance to the points raised by the applicant in the application for an award of costs include:
  - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
  - failure to produce evidence to substantiate each reason for refusal on appeal;
  - not determining similar cases in a consistent manner;
  - imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations; and
  - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

4. The condition in dispute is number 5 which requires the provision of a 5m landscaping strip on the southern boundary of the appeal site. The applicant considers that the landscaping condition is not required as the built form of the development has not moved and as Inspectors considering previous appeals (Appeal A and B<sup>1</sup>, Appeal C<sup>2</sup> and Appeal D<sup>3</sup> did not impose such a landscaping condition or refer to the potential need for one in their reasoning. However, for the reasons set out in my Decision, the development subject to this appeal is different to the previous appeals. Consequently, they are not directly comparable to the appeal proposal.
5. The Council's case relating to the effect of the proposal on the character and appearance of the area is set out in the officer's delegated report which clearly identifies the harm which would arise from the development without the landscaping condition with reference to relevant development plan policies. Furthermore, the report clearly sets out why it considers the current appeal proposal is different to previous appeal proposals. Consequently, I consider that the Council has substantiated the reason for not removing condition 5.
6. The applicant also considers that the Council has not been consistent in determining planning applications with specific reference to an application granted planning permission for a proposed dwelling on an adjacent site in which the Council did not impose a condition for a 5m landscaping strip. However, as explained in my Decision, the access road would be required to serve the appeal property, being situated furthest from the access point, regardless of the proposed adjacent dwelling. Furthermore, the extended curtilage and repositioning of the access road further south has arisen from the need for amenity space at the appeal property. The necessity for the condition has, therefore, arisen from the appeal property. Furthermore, the application for the adjacent dwelling post-dated the application for the appeal site. Given that the appeal building was already built, and an application had been submitted for a change of use to residential there was a reasonable prospect that the appeal proposal would be implemented. The likelihood of the appeal proposal being implemented was a matter of planning judgment. The Council has not, therefore, been unreasonable in this regard.
7. As can be seen from appeal decision, I agree with the Council that the condition is required to make the development acceptable and is, therefore, necessary, relevant to planning and to the development to be permitted. The applicant has not raised concerns regarding the wording of the condition, and I have no reason to disagree. The Council has not, therefore, been unreasonable in this regard.

## **Conclusion**

8. For the reasons stated, I conclude that the Council has not acted unreasonably. In these circumstances, it is not necessary to consider the question of any expense incurred. Since unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, the application cannot succeed.

*Caroline Mulloy*

Inspector

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<sup>1</sup> Appeal references: APP/X1355/C/19/3240887 (Appeal A) & APP/X1355/C/19/3240888 (Appeal B)

<sup>2</sup> Appeal reference: APP/X1355/W/19/3240785 (Appeal C)

<sup>3</sup> Appeal reference: APP/X/1355/W/20/3249982 (Appeal D)