
Costs Decision

Site visit made on 17 October 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 17 November 2016

**Costs application in relation to Appeal Ref: APP/M1005/W/16/3155384
Mill Green House, Snake Lane, Duffield, Belper, Derbyshire DE56 4FF**

- 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 & Mrs Johnson for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a new dwelling and associated external works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both^[1]. The application was made in writing and therefore there is no need to rehearse the detailed points made.
4. The main thrust of the applicants' case is that the Council has failed to substantiate the reasons for refusal, that it has failed to take into account the information that was submitted with the application and that the reasons for refusal are inaccurate.
5. The Council have not submitted a statement of case but have relied upon its Officer Report to substantiate the reasons for refusal. The report is comprehensive and clearly substantiates the reasons for refusal. As such, I do not consider that the Council's evidence which explained the reasons for the Council's stance was materially deficient in its reasoning.
6. In relation to flood risk the Council considered that the Sequential Test had not been met by the evidence contained with the application. In this case the

^[1] Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

dispute between the parties relates to the catchment area the test should be applied to. This is a matter of judgement and even though I have found in favour of the applicants in my decision the Council was not unreasonable in coming to its conclusion on the Sequential Test.

7. The Council have stated that the appeal site contains land within Flood Zones 2 and 3 and that it does not contain any land within Flood Zone 1. They have relied upon the Environment Agency's Flood Map for Planning (Rivers and Seas) to substantiate this. However, the Flood Risk Assessment (FRA) has refined the definition of the Flood Zones on the site using the topographical survey and the predicted flood levels supplied by the Environment Agency. The Council has not provided any robust evidence as to why it considers the data within the FRA is incorrect.
8. However, as its reasons for refusal both relate to the failure of the application to meet the Sequential Test I do not consider that the definition of the Flood Zones on the site would have altered the Council's decision and negated this appeal.
9. The reasons for refusal set out in the decision notice were complete and clearly stated the policies of the development plan and the National Planning Policy Framework that the proposal would be in conflict with. However, I agree with the applicants that the wording of the second reason should have been more precise. But the Officer Report did clearly demonstrate how the Council considered the proposal would not meet the Sequential Test.
10. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

D. Boffin

INSPECTOR