
Costs Decision

Site visit made on 16 May 2018

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 25 May 2018

Costs application in relation to Appeal Ref: APP/H0928/W/18/3195565 Land at Church Road, Greystoke, Penrith CA11 0TW

- 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 R Kellett for a partial award of costs against Eden District Council.
 - The appeal was against the refusal of planning permission for 2 no stable buildings and feed storage building.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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. A local planning authority (LPA) is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
4. The applicant submits that the LPA acted unreasonably by refusing the proposal on the grounds of increased risk of flooding, without having adequate planning grounds to do so. In addition, the applicant also submits that the LPA failed to properly review their case on the basis of the updated Flood Risk Assessment¹ (FRA).
5. The LPA's Planning Committee refused planning permission contrary to officer recommendation. While the LPA is not duty bound to follow its officer's recommendations, if a different decision is reached the LPA must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.
6. The reason for refusal describes the LPA's concerns and the relevant development plan policies are set out. Additionally, the LPA's statement adequately sets out why the Members of the Committee departed from the officer recommendation, advice from the Environment Agency and guidance

¹ Prepared by Andy Poole BEng (Hons) CEng MICE for Tweddell & Slater Ltd. Dated January 2018.

offered by the PPG. There were a number of objectors to the scheme, a significant amount of anecdotal evidence and photographs were presented with regards to past flood events, and the FRA detailed the site was in Flood Zone 2.

7. Whilst I have not agreed with the LPA's decision, the LPA exercised their duty to determine this planning application in a reasonable manner having regard to the particular merits of the case, taking account of all available information. On this ground, the LPA have not behaved unreasonably and an award of cost is not justified.
8. The LPA do not appear to have had any regard to the updated FRA in their statement or costs rebuttal, which takes account of the site being in Flood Zone 3. The LPA's statement relies on the FRA submitted with the planning application, stating that it cannot be considered to be entirely accurate. As the applicant submitted an amended FRA with the appeal, the LPA should have reviewed their case promptly following the lodging of an appeal against refusal of planning permission, as part of sensible on-going case management. This was unreasonable behaviour.
9. In terms of unnecessary or wasted expense, the LPA were already aware that the site was in Flood Zone 3 when they made the decision. Accordingly, even if they had taken account of this updated document, it is likely that they would have maintained their reason for refusal.
10. Furthermore, as I have found the LPA did not unreasonably refuse the proposal; the updated FRA was necessary for the appeal to proceed. Therefore, even though the LPA should have reviewed the FRA, this has not lead to the applicant incurring unnecessary or wasted expense in the appeal process so as to justify an award of costs.
11. Therefore, the application for an award of costs is refused.

Katie McDonald

INSPECTOR