



Costs Decision

Site visit made on 7 March 2019

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2019

Costs application in relation to Appeal Ref: APP/B3030/W/18/3217750 Wharf Cottage, Carlton Ferry Lane, Collingham, Newark NG23 7LZ

- 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 Mark Grocock for a full award of costs against Newark and Sherwood District Council.
 - The appeal was against the refusal of planning permission for the construction of a new driveway.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The appellant claims that the Council has adopted an inconsistent approach to the determination of applications within the floodplain, including for similar proposals and for a garage with accommodation above at Wharf Cottage, (Ref 18/01688/FUL). The application is also claimed not to have been considered in a correct manner starting with the change to the description of development to include reference to a change of use of the land. Further, the appellant has referred to the lack of engagement with the Planning Officer, including advising about the design related concerns, and the failure to take into account the existing and potential impact of mineral workings on the character and appearance of the surrounding area. As a consequence of these matters, the proposed development was refused for vague, generalised or inaccurate reasons and this has delayed development which should have been approved.
4. The Council assert that the appeal application was assessed in an appropriate manner in respect of flood risk considerations, taking into account the nature of the development and the approach to vulnerability in national policy and guidance. The other schemes referred to by the appellant are not directly comparable to the appeal scheme because they relate to differing forms of development. The Council refute the allegation the application was not handled in an appropriate manner and have identified the level of engagement with the appellant, including the concerns about the principle of the proposed drive being within the floodplain. Reference to potential future mineral workings should be given limited weight because of the early stage of the preparation of the relevant development plan.

5. Consideration of the effect of the proposed development on the character and appearance of the surrounding area is a matter of judgement and there can be differences of opinion on this matter. Although I have reached a different conclusion, from the Planning Officer's report there is sufficient evidence to support this reason for refusal, including reference to the landscape character assessment, and the reason is clear about the harm which the Council consider might arise. It is also reasonable for limited weight to be given to future mineral workings because of the early stage in the process for the preparation of the development plan. It is, therefore, unlikely that a different decision would have been reached on design grounds.
6. As identified in the appeal decision, the Council has assessed that the appeal scheme is residential development which would extend the domestic curtilage of the appellant's dwelling and, as such, it fell within the most vulnerable form of development which should be resisted within Flood Zone 3b. The approach in the determination of the appeal reflects the claims of the appellant about the proposed drive being akin to a minor development within the floodplain and not presenting an increased risk of flooding to the appellant or to others. If this approach had been adopted by the appeal then the risk of flooding reason for refusal would not have arisen.
7. Each application should be assessed on its own considerations having regard to the development plan and the context of the site. Based upon the information provided by the Council and the appellant I am satisfied that the other schemes which have been identified can be sufficiently differentiated from the proposed drive so as not to amount to similar development requiring a consistency of decision.
8. By reason of the concerns associated with the design of the proposed development it is unlikely that this appeal could have been avoided and, therefore, a full award of costs is not justified. However, for the reasons identified, it is appropriate for a partial award of costs to the appellant but limited to those matters solely arising during the appeal process concerning the risk of flooding. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. 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 Newark and Sherwood District Council shall pay to Mr Mark Grocock, the costs of the appeal proceedings described in the heading of this decision but limited to only those matters relating to the risk of flooding; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Newark and Sherwood District 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.

D J Barnes

INSPECTOR