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## Costs Decision

Site visit made on 13 May 2019

**by Felicity Thompson BA(Hons) MCD MRTPI**

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

**Decision date: 10<sup>th</sup> June 2019**

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### **Costs application in relation to Appeal Ref: APP/H0928/W/19/3222726 Skirsgill Lane, Eamont Bridge, Penrith, UK, CA10 2BQ**

- 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 Ray King for a full award of costs against Eden District Council.
  - The appeal was against the refusal of planning permission for erection of single dwelling intended for local occupancy.
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### **Decision**

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

### **Reasons**

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The basis of this costs claim is that, in the view of the applicant, the Council acted unreasonably in substantive matters relating to the application, in failing to substantiate its reasons for refusing the application and preventing development which should have been permitted.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
6. The decision was made contrary to officer recommendation and by a small margin at the Planning Committee. Whilst images were provided by an objector which depicted a 1:1000 year flood event and it is likely that some images may have provoked an emotive response, there is no substantive evidence before me to demonstrate that the decision was made solely on this basis.
7. In their consultation response the Environment Agency (EA) confirmed that they were satisfied that the submitted Flood Risk Assessment demonstrates

that the proposed development would not be at an unacceptable risk of flooding or exacerbate flood risk elsewhere. Whilst they went on to consider the proposal satisfies the second element of the Exception Test set out in Paragraph 160 of the National Planning Policy Framework (the Framework), they highlighted that if the local planning authority determined that the sequential test had not been met then the application would not be in compliance with the Framework and they would not support it. This is not unqualified support for the proposal.

8. The Councils appeal statement addresses the applicant's sequential test and why they consider it had not been passed. It is evident from my decision that I agree with the Council and that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should not have been permitted.
9. I consider the Council were unreasonable to refer to groundwater flooding in their decision notice without any substantive evidence, and to the site being within Flood Zone 3. However, given my above findings, I am not persuaded that this has led to the applicant incurring unnecessary or wasted expense in the appeal process so as to justify an award of costs.
10. Therefore, the application for an award of costs is refused.

*Felicity Thompson*

INSPECTOR