



Costs Decision

Site visit made on 10 June 2019

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Costs application in relation to Appeal Ref: APP/K1128/W/19/3226094 The Crab Pot, Chestnut Park to Beesands, Beesands TQ7 2EH

- 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 Harris for a partial award of costs against South Hams District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing two bedroom chalet and construction of a two bedroom house.
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Decision

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

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. A partial award of costs is sought on the basis that the second reason for refusal was not substantiated. The appellant makes the case that it was agreed that the replacement building fell within Flood Zone 1 and that it is wholly misconceived that land adjacent to a flood risk area should be treated as being equally vulnerable to flooding as land within a flood risk area.
4. The Council had not raised this issue before, and the appellant had not been asked to submit or consider flood risk information. It is said that the Council has failed to provide within its appeal statement any substantive information to support its second reason for refusal, other than that the appeal site is next to, but outside of, an area at risk of flooding. In respect of the matter of access in the event of an emergency, rather than refuse planning permission and instigate an appeal, the Council should have considered the use of an appropriate condition in the first instance, which it did not do.
5. I have not received a Council response to the costs claim. I have, therefore, examined the merits of the claim based on all the other information the Council has submitted to support the appeal and general guidance in the National Planning Policy Framework and the Planning Practice Guidance.
6. The planning report did not raise the issue of flood risk as a determining matter and there is very little in the report that references flooding. The Parish Council did briefly mention flooding as an issue at the planning application stage. While the dwelling itself would be within Flood Zone 1, the Environment Agency

information does show that part of the red lined application site is within Flood Zone 2, as well as the road in front of the site.

7. It is unfortunate that the concerns in relation to flood risk had not been identified earlier. Nevertheless, it was legitimate for the Committee to highlight this as a material concern. While the evidence from the Council to support the reason for refusal is brief, it was sufficient, and it will be seen from my decision that the reason for refusal is well founded. It will also be seen that I am not satisfied, based on the circumstances of the case, that a condition requiring details of a link to the site from the side road, which would seek to address this issue at a later time, would be reasonable.
8. As a result, it follows that I cannot agree that the Council has acted unreasonably in this respect of this reason for refusal. As such there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR