
Costs Decision

Site visit made on 11 June 2019

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Costs application in relation to Appeal Ref: APP/V2635/W/18/3218937 41 Wildfields Road, Clenchwarton, PE34 4DE

- 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 Andrew Willie for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal of planning permission for a proposed change of use of Annex for use as a dwelling.
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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.

The Application

3. The National Planning Practice Guidance advises that the word 'unreasonable' is to be understood in its ordinary meaning. In the context of an application for an award of costs the Appellant therefore has to demonstrate that the Council has either behaved unreasonably procedurally (relating to the process), or substantively (relating to the issues arising from the merits of the appeal).
4. The summary of events that are considered important to the determination of this application for costs are as follows: the Council consulted the Environment Agency (EA) on 10th July 2018; the EA responded on 30th July 2018 with no objection to the proposed development; a site specific Flood Risk Assessment (FRA) was requested by the Council on 14th August 2018; a site specific FRA was completed and submitted on 31st August 2018; no further consultation with the EA took place as confirmed by the EA on 8th October 2018; planning permission refused contrary to no objection by the EA on 15th October 2018
5. The Council has behaved unreasonably by failing to: re-consult the EA on the submitted FRA; take into account the findings of the FRA; consider imposing planning conditions to mitigate any concerns in relation to the mitigation measures proposed in the FRA, including safe refuge in the loft space.
6. The National Planning Policy Framework requires councils to determine planning application positively, and where otherwise unacceptable development

would be made acceptable, approve without delay through the use of conditions. The Council's failure to re-consult, take into account the FRA or use planning conditions has resulted in an incorrect decision to refuse planning permission, resulting in these appeal proceedings, which has resulted in the Appellant incurring unnecessary costs.

The Rebuttal

7. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met.
8. The response from the EA on 30 July 2018 makes clear that, whilst they were not able to comment on the application, and consequently had no objection, the application should not be determined until a FRA was submitted which could clearly show how flood risk would be mitigated at the site in order to ensure the development and its occupants would be safe. Within this response, and also email correspondence with the planning officer (PO), it was made clear that whilst the EA would not comment due to the nature of the development, the issue of safe refuge should be considered seriously by the Council.
9. Following the submission of the FRA, the EA was not re-consulted as it had already stated that it would not comment due to the nature of the development. This is shown in the original response from the EA dated 30 July 2018 and emails between the PO and the EA between the 30 July 2018 and 31 July 2018. The findings of the FRA were considered by the Council when determining the application, as is clearly shown within the PO's report dated 15 October 2018.
10. The PO's report clearly states that whilst the agent has suggested safe refuge within the loft space and a legal agreement, which would require the occupiers of the donor dwelling to make first floor safe refuge available to occupiers of the new dwelling in a flood event, these were not considered acceptable mitigation measures. There was a lack of detail provided regarding safe refuge and the Council did not think it reasonable to place such an obligation on future occupants of either dwelling which, should the change of use be approved, would be unrelated and separate planning units.
11. The Council has also met all the timescales for submissions relating to the application and this appeal.

Conclusions

12. In my experience it is normal practice in respect of developments that are not greatly significant in flood risk terms, for the EA to offer no objections but to point out any salient matters for the local planning authority's attention and then leave the decision to that authority. Thus, upon receipt of the FRA there would have been no need for the Council to re-consult the EA. In this context, the EA is a statutory consultee, but it is the local planning authority that makes the decision.
13. In broad terms I have found that the Council's conclusion following its consideration of the FRA was justified. A separate dwelling in flood zone 3, in the circumstances of the appeal application, should have a safe means of

escape or a safe refuge in the event of a flood. At no time was a properly thought out proposal for a safe refuge put forward.

14. I am bound to note also that the application, when first made, was not accompanied by a FRA. This in spite of the fact that the application site is situated in flood zone 3. Whilst the Council might have asked for detail of the proposed safe refuge arrangement to be provided before determining the application, it is for the applicant to submit a sound and complete planning application, and it needs to be borne in mind that there are time pressures on councils to process decisions.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Terrence Kemmann-Lane

INSPECTOR