



Costs Decision

Site visit made on 28 September 2020

by A Denby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2021

Costs application in relation to Appeal Ref: APP/J1915/W/20/3254717 Land adjacent to Hermitage Cottage, Scholars Hill, Wareside, SG12 7RQ

- 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 Bill & Sally Tillbrook for a partial award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for demolition of an existing double garage in Wareside Conservation area to construct 2 bed dwelling on a portion of land to the rear of Hermitage Cottage, Wareside.
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Decision

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

Reasons

2. Paragraph 030 of Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 049 of PPG goes on to state that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The applicant states that the Council based their second reason for refusal on an incorrect and unreasonable assumption that the site lies partly within Flood Zone 2. They consider that if the Council had checked the Environment Agency (EA) flood maps it would have been clear that the site lies within Flood Zone 1. As such, they contend that there was no requirement for a Flood Risk Assessment to be submitted. It is also contended that the Council's view the property was at high risk of surface water flooding was not based on any factual evidence.
4. The EA flood maps, whilst providing an indication of the flood zones, are not sufficiently clear or precise on their own. In this instance, whilst the appeal site appears to largely fall within Flood Zone 1, from the maps alone it does appear that the north-east corner of the site could fall partially within Flood Zone 2. I have explained this in my decision on the appeal case.
5. The Council did advise at the pre-application stage that they considered the site to partly fall within Flood Zone 2 and 3. I have not been made aware of any detail submitted with the planning application to challenge this or establish that this was not the case. The Planning Statement submitted with the original

planning application also stated that the north east of the site was either slightly within or adjoining the boundary of Flood Zones 2 and 3.

6. Nevertheless, there is no detail to demonstrate the basis on which the Council determined the extent of the flood zone or that the site was susceptible to surface water flooding. Therefore, I do consider they have been unreasonable in that regard as they have failed to produce evidence to substantiate this reason for refusal on appeal.
7. The EA were consulted on the application and raised no objections subject to an informative. However, this appears to relate only to the impact of proposed works on the existing flood defences and retention of an adequate buffer to the brook. The EA would not necessarily review surface water data as part of a planning submission.
8. The information submitted to the appeal has demonstrated that the site is at high risk of surface water flooding. Drawing on the above, whilst I find the Council acted unreasonably in not fully substantiating its case, it was necessary for further site-specific information to be submitted in order to establish the extent of the flood zone and surface water flooding in this location. Hence the need for a FRA. Although the Council's reasoning appears to be confused, I have found that there were reasonable concerns about the impact of the proposed development which justified its decision in this regard.

Conclusion

9. Whilst I find that unreasonable behaviour has occurred, it has not been demonstrated that this led to unnecessary or wasted expenses being incurred. As such, the requirements for an award of costs to be granted, as set out within the PPG, have not been met.

A Denby

INSPECTOR