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## Costs Decision

Site visit made on 24 October 2022

**by J Symmons BSc (Hons) CEng MICE**

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

**Decision date: 30 November 2022**

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### **Costs application in relation to Appeal Ref: APP/M0933/W/22/3302654 9 Mounts Meadow Close, Gleaston, Ulverston, Cumbria LA12 0RL**

- 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 A Davies for partial award of costs against South Lakeland District Council.
  - The appeal was against the refusal of planning permission for internal alteration to sub-divide existing single dwelling into 2 no dwellings.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. One of the reasons for the refusal of planning approval was that a site specific flood risk assessment (FRA) was not provided in accordance with national policy due to it being shown in Flood Zone 3 on the Government's Flood Map for Planning. The application for costs relates to this issue only. It is noted that the Council did not consult with the Environment Agency (EA) as required during the determination of the application. Following the planning refusal, to address the flood risk aspect, the appellant completed a FRA and submitted this as part of the appeal. In the preparation of the FRA the EA was consulted and confirmed that the flood map for the site was incorrect, and the site was in Flood Zone 1. The appellant therefore contends that if the Council had consulted the EA during the determination stage, then the flood map error would have been identified and flood risk would not have been raised as an issue. Therefore, the appellant asserts that the Council's failure to consult the EA resulted in them incurring unnecessary expense in the appeal process.
4. The Council acknowledge its error in not consulting the EA during the determination and apologised for this. It also removed the flood risk reason for refusal following the EA confirming it had no objection. The Council however, note that during the determination of the application the appellant was advised that the submitted FRA form did not meet the requirements of a FRA. In spite

of this, it is understood that due to the proposal being refused on other grounds, the appellant chose not to submit a FRA.

5. It is clear that both parties believed the site was within Flood Zone 3 at the application and determination stages and had no reason to believe that the flood map was incorrect. Accordingly, a FRA in accordance with national policy was required and the Council's request for a FRA was not unreasonable at this stage. Due to the appellants failure to provide a FRA at that stage, and as the application was being refused on other grounds, the Council's failure to consult the EA was not unreasonable. Had a FRA been provided at that stage and the Council consulted the EA, the revelation that the site was in Flood Zone 1 may have been discovered sooner and this issue would not have been a reason for refusal. However, the flood risk input required at the appeal stage is not significantly different to what should have been completed at the application stage and during determination. I therefore conclude that there has been no increased input in this regard.
6. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason, and having had regard to all other matters raised, an award of costs is not justified.

*J Symmons*

INSPECTOR