



Costs Decision

Site visit made on 17 October 2023

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Costs application in relation to Appeal Ref: APP/P0119/W/22/3312355 Buckley Wright, Severn Road, Hallen BS10 7RZ

- 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 Graham Rose (RSS Property Ltd) for a full award of costs against South Gloucestershire Council.
 - The appeal was against the refusal of planning permission for the erection of a pair of semi-detached houses, with integral garages and variation to existing access.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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. The appellant states that the general conduct of the case officer and their refusal to allow an extension of time for additional information to be submitted amounted to unreasonable behaviour which ultimately resulted in the submission of the appeal. It is stated that, if the correct advice had been given initially, the appeal could have been avoided.
4. Local and national policy in relation to flood risk is clear. Where flood risk is identified, the sequential test should be applied and if this is shown to have been passed, then the development, where applicable, should also pass the exception test.
5. For the reasons set out in my decision it is clear that the proposal does not pass the sequential test. Whilst the Council has accepted that communication was unsatisfactory during the application, and it appears that the Council did not confirm to the applicant the extent of the area of search for the sequential test during the course of the planning application or pre-application enquiry, nonetheless the PPG¹ states that the purpose of the sequential test is to steer new development to areas with the lowest risk of flooding. It should therefore have been clear to the applicant that a sequential test which considered only the land in the ownership of the applicant (the appeal site) and did not consider any other reasonably available sites would not accord with the guidance set down in the PPG.

¹ Paragraph: 024 Reference ID: 7-024-20220825

6. The application was submitted on 21 December 2021 and determined on 11 August 2022. The application had therefore gone beyond the statutory determination period. It is unfortunate that the Council did not allow an extension of time to allow the applicant to address the Council's comments on the sequential test. However, even if the Council had not determined the application at that point and had waited for the submission of an updated sequential test, there would have been no guarantee that the development would have been deemed acceptable in relation to flood risk, and therefore, that the application would have been approved.
7. In arriving at this view, I have considered the evidence put forward by the applicant in the course of the appeal, in which the area of search for the sequential test was extended to sites within the village of Hallen. However, for the reasons set out in my decision, there is no justification for the search area to be constrained to the settlement.
8. Although I understand the applicant's evident frustration with their perception of the Council's approach, insofar as is relevant to this costs application, based on all of the evidence before me, it has not been demonstrated that any action or inaction by the Council amounts to unreasonable behaviour as described in the PPG, directly resulting in unnecessary or wasted expense at appeal. Accordingly, an award of costs is not justified.

N Robinson

INSPECTOR