



Costs Decision

Site visit made on 31 January 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024.

Costs application in relation to Appeal Ref: APP/C3810/W/23/3324032 51 Warren Way, Barnham, West Sussex PO22 0JX

- 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 Damon Hill for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for the erection of an additional dwelling.
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Decision

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

Reasons

2. 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 applicant's costs application is based on its view that the Council has been inconsistent in their decision making with planning permission granted for an additional house in Flood Zone 3 at 49 Warren Way¹ near to the appeal site; the applicant contends that this decision encouraged preparation and submission of the appeal application. The applicant also questions the different decision making processes for both applications, with Ref BN/152/20 determined at Planning Committee and the appeal application under delegated powers. Furthermore, the applicant contends that not all material considerations that had been presented were taken into account and if they had, would have justified the grant of planning permission thereby avoiding the need to appeal.
4. PPG explains that examples of unreasonable behaviour by local planning authorities includes a failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact that are unsupported by any objective analysis.
5. In this case, I found that the appeal proposal was unacceptable in planning terms contrary to the development plan when read as a whole and taking into account material considerations. The appeal proposal would be located in Flood Zone 3 and was not supported by a robust sequential test or Flood Risk Assessment that demonstrated that flood risk could be suitably mitigated.

¹ Ref BN/152/20

6. The presence of Ref BN/152/20 does not set a precedence to which the appeal scheme should now benefit from without due assessment of its individual merits, which the Officer's Report does clearly and fairly. For example, the Planning Officer's report explains clearly and rationally the Council's professional opinion why the appeal proposal was unacceptable in flood risk terms both with regard to compliance to locational policy matters as well as technical mitigation measures. The Officer's Report also refers to material considerations including advice from the Council's Surface Water Drainage officer including noting the difficulty with Ref BN/152/20 being able to discharge drainage conditions, the differences between the two sites and whether the issues could be addressed through use of conditions. I find, therefore, that the Council's assessment was entirely reasonable and one they were entitled to make based on the facts and application of planning judgments as they saw them.
7. I do, however, acknowledge the applicant's point about the lawfulness of the perimeter wall not being referred to in the Officer's Report. This matter, however, and as set out in my main decision would not have been determinative in the decision and therefore not demonstrative of unreasonable behaviour in the consideration of the planning application.
8. The fact that Ref BN/152/20 was determined by the Council's Planning Committee whereas the appeal proposal was determined under delegated powers is a procedural aspect of the planning system that does not amount to unreasonable behaviour as both are legitimate decision making processes.
9. Overall, I am satisfied that the Council fully substantiated the reasons for refusing planning permission by undertaking an objective analysis. The inconsistency in decision making was acknowledged and material considerations discussed in the Officer's Report. Accordingly, I do not agree that the Council acted unreasonably in refusing planning permission for the proposed development.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

N Perrins

INSPECTOR