



Costs Decision

Site visit made on 17 September 2024

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2024

Costs application in relation to Appeal Ref: APP/F1040/W/24/3343255 2 Sapperton Lane, Church Broughton, Derbyshire DE65 5AU

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Bates for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the erection of 2 new dwellinghouses.
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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.
3. The appellant has identified that the Local Lead Flood Authority (LLFA) did not object to the proposed development because the scheme would include the creation of additional flood storage on-site and finished floor levels for the dwellings being 0.3 metres above existing ground level. The appellant has highlighted that the application was in outline form and, as such, the principle of the infill development should have been assessed rather than a detailed design. Accordingly, the council did not have adequate reasons for refusing the appeal application and the vague reasons for refusal have not been substantiated as part of this appeal.
4. The council acknowledge that there is no objection from the LLFA but the Members still had concerns related to flooding based upon other information provided, including alternative evidence from a local resident who had expertise in flooding matters. This evidence also raised the need for a sequential test to be undertaken. The council consider that whether a particular scheme represents infill development in a small group of housing is a matter of planning judgement and this was exercised by Members who did not accept the advice of the Planning Officer because they judged the gap to be too wide.
5. There is no dispute between the parties that the site is the subject of potential risk from surface water flooding and the appellant should have realised that, as identified in the National Planning Policy Framework, a sequential test was required. The absence of a sequential test to demonstrate that there is not

land at a lower risk of flooding available for the proposed development is a reason to refuse planning permission. The technical measures proposed by the appellant and agreed by the LLFA follow after a sequential test is undertaken.

6. Whether the appeal scheme would be infill development that is in keeping with the character of the locality and represents the infilling of a small gap within a small group of housing is a matter of planning judgement. In this case, including because layout was not reserved for future approval, the judgement of Members differed from the Planning Officers. This departure from the professional advice of Officers has been adequately explained by the Council as part of this appeal.
7. Contrary to the appellant's claims, the 2 reasons for refusal are not vague and they have been justified as part of this appeal. This is not a clear case where an appeal would have been avoided and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

D J Barnes

INSPECTOR