

## Costs Decision

Site visit made on 25 September 2024

**by N Teasdale BA (Hons) DipTP MRTPI**

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

**Decision date: 28 October 2024**

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**Costs application in relation to Appeal Ref: APP/J1915/W/24/3336444  
Waterfront House, Station Road, Bishops Stortford, Hertfordshire CM23  
3BL**

- 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 W Thomas for a full award of costs against East Hertfordshire District Council.
  - The appeal was against the refusal of planning permission for demolition of existing two storey office building and erection of a new four storey residential block consisting of 4 one bedroom flats, 4 two bedroom flats and 1 three bedroom flat - resubmission.
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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 PPG advises behaviour that may give rise to a substantive award of costs including, amongst other matters, not determining similar cases in a consistent manner.
4. The applicant claims that a reason for refusal in a previously submitted scheme related to the absence of an acceptable site-specific Flood Risk Assessment and Drainage Strategy which was subsequently complete in bringing the current appeal scheme forward. It was therefore felt that this reason for refusal had been overcome.
5. The second reason for refusal on the current appeal scheme however relates to works within 8 metres of a main river and flood defences explaining that it would restrict essential maintenance and emergency access to the main river. It also refers to the absence of an acceptable sequential test and if necessary, exceptions test to demonstrate that other sites at a lower risk of flooding are not reasonably available to accommodate the development. The appellant therefore alleges inconsistency in decision making by the Council given that this was not cited within the previous reason for refusal.
6. Whilst the previous reason for refusal did not cover these matters specifically as stated in the current decision, it did refuse permission on flood risk grounds. A detailed Flood Risk Assessment was not submitted which would have been reasonably expected to cover matters relating to the works and requirement

for a sequential test given the location of the site in flood zone 2. To this end, the assessment subsequently prepared for the site specifically states at paragraph 5.17 that as the site is located in flood zone 2, a Sequential Test will be required and will need to be prepared by a suitably qualified planner. This was not undertaken.

7. The previous application was refused contrary to Policy WAT1 of the East Herts District Plan, 2018 which explains that appropriate distances and buffers between water courses and built development should be maintained in accordance with Environment Agency guidelines. In addition, the Policy also explains that in order to steer new development to areas with the lowest probability of flooding, the sequential test will be used. This Policy was also cited in the reason for refusal of the current scheme.
8. I understand that a brief document was submitted with the original application which explained that a sequential test is still likely to be triggered due to the flood zone 2 designation. Paragraph 165 of the National Planning Policy Framework also advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Paragraph 167-171 outlines the requirement for the sequential and exceptions tests. The PPG also makes it clear that a sequential test is required in this case.
9. Based on the evidence before me, I have no reason to disagree that prior to the submission of the first of the two applications on the site, the appellant was aware of the need for a sequential test for the development. This was also apparent for the current scheme as set out within the Flood Risk Assessment which was complete. I also understand that the appellant had the opportunity to respond to such requests via emails from the Council prior to them issuing a decision.
10. On this basis, I do not find inconsistency in decision making alleged by the appellant to have taken place. Unreasonable behaviour resulting in unnecessary or wasted expense has not therefore occurred and an award of costs is not warranted.

*N Teasdale*

INSPECTOR