



Costs Decision

Site visit made on 12 August 2024

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Costs application in relation to Appeal Ref: APP/D3125/W/24/3337856 Land to the rear of 110 Witney Road, Ducklington, Witney, Oxfordshire OX29 7TN

- 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 Laurence Jones for a full award of costs against West Oxfordshire District Council.
 - The appeal was against the refusal of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of two 4-bedroom detached houses and 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 submits that the Council has acted unreasonably and caused it to incur unnecessary expense. The reasons given are that:

Behaviour of the Council

- At the time of validation, the Council did not require a Flood Risk Assessment (FRA) or sequential and/or exception tests. The Council did not inform the appellant at the pre-application meeting that there was an on-going challenge to the Flood Risk Map for Planning that included his site.
- The decision should have been made by the planning committee on 11 September 2023 and they should not have sought additional information.
- The appellant was required to produce a new Preliminary Ecological Appraisal (PEA) despite an earlier version still being in date. The ecology officer refused to discuss the matter and was too inexperienced.
- The actions of the planning officer and committee were prejudicial to his interests and his reasonable expectations of how a public body would assess his application.

Potential errors by the Council

- Mistakes were made when determining the adjacent site, which have unreasonably impacted on development of the appellant's land. The two sites have been unjustifiably linked.
- Concerns regarding flooding should have been dealt with via a condition as part of a 'full planning application'.

Flaws in the approach to flooding

- That the Flood Map for Planning should not have been relied upon for Development Control purposes. The Strategic Flood Risk Assessment (SFRA) should have been used instead.
- The revisions to the Flood Map for Planning have been conducted in a biased and partial manner to take account of anecdotal views of local anti-development campaigners and a Council that does not accept the outcome of the Planning Inquiry for the adjacent site.
- That the Council has not sought advice from the consultants that prepared the SFRA.
- Additional architectural fees were incurred to demonstrate that the development could take place within the least vulnerable part of the site.

Conclusions

4. The costs regime is intended to encourage use of the right of appeal rather than address unreasonable behaviour and wasted expense during the application process. Costs incurred in submitting a planning application are therefore generally ineligible for reimbursement through the appeals process.
5. Many of the appellant's reasons for requesting costs relate to the application process. It has not been demonstrated that these have not led to or are related to the appeal. I am therefore unable to take these into account. This includes lack of communication, decisions on the adjacent site, and the requirement for a PEA, new architectural drawings and implied bias.
6. I have considered whether the planning committee should have relied on the extant flood map and the appeal therefore possibly avoided. As the Council was aware that a review of the flood zone was being undertaken, I am satisfied that it was reasonable to defer the decision given the potential seriousness of the matter.
7. I do not find that the sites have been 'unjustifiably linked'. Key factors when considering flooding are proximity and topography, and it is reasonable that a review of flooding in the area incorporated all nearby sites that could be affected.
8. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the EA, who are experts in the field, provided clearly justified evidence that the mapped flood zone may be wrong. I find this to be a relevant material consideration in accordance with PPG. I am satisfied that the Council had regard to its policies but has rightly incorporated other important considerations.

9. The Council should have consulted with the LLFA, given their lead role on local flooding matters and ownership of the SFRA. However, in light of the advice from the EA an appeal would still have been necessary, and I have no evidence before me that the lack of consultation has led to unnecessary or wasted expense.
10. For the reasons set out in my decision, it would not have been appropriate to use a condition to control a matter that may not be acceptable in principle.
11. In light of the above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award for costs is therefore not justified.

B Davies

INSPECTOR