
Costs Decision

Site visit made on 27 September 2016

by Paul Singleton BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 November 2016

Costs application in relation to Appeal Ref: APP/L3245/W/16/3152344 Land in Middleton, Ludlow, Shropshire

- 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 Mark Wiggin for a partial award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for erection of 6 No open market dwellings & 7 No 2 bed dwellings to rent, traffic calming and estate road.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. The appellant contends that the Council acted unreasonably in using flood risk concerns as a reason for refusal and that he has incurred unnecessary expense in dealing with these matters as part of the appeal.
 3. The initial consultation response from the Council's Flood and Water Management (FWM) officer indicated that details of the proposed drainage of the site could be dealt with by means of planning conditions. The FWM officer's second consultation response, dated 21 January 2015, noted the evidence within the appellant's Flood Risk Assessment (FRA) of the flood risk events that had occurred in 2008 and that this suggested that the Environment Agency's model is incorrect and that flooding is more widespread. That information clearly provided a changed context in which that officer needed to assess the likely risk to the proposed development and to provide technical advice to the planning officer. Given the FRA's clear acknowledgement of the level of flood risk to the site and its surroundings, it is unrealistic for the appellant to seek to rely upon the earlier consultation response as setting out the FWM officer's position on the planning application.
 4. The second consultation response noted the potential solutions put forward in the FRA. However, it clearly identified the need for further flood modelling to provide a more accurate assessment and for additional information to be provided to demonstrate that the proposed mitigation works provided a realistic proposition regarding land ownership, ditch depths and the effect on
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the fields where the ditches would be installed. The planning case officer sent the FWM officer's consultation response to the appellant's agent on the 22 January 2015 (the day following her receipt of it) and both the appellant and the agent then sent emails on the 23 January to confirm that the land needed for the mitigation works is in the appellant's ownership. However, although a large number of further emails were sent by the agent to the case officer in the ensuing 11 months, no further information was submitted in relation to the other matters raised and no additional modelling appears to have been carried out.

5. As set out in my decision on the planning appeal, I consider that the additional information requested by the FWM officer would need to be available and to be assessed prior to the grant of outline permission in order to provide confirmation that there would be no residual risk to the site and adjacent properties and that the proposed mitigation would not give rise to an increase risk of flooding elsewhere. Accordingly, it would not have been appropriate for these matters to be left to be dealt with by means of a planning condition or reserved matters application as the appellant has argued.
6. For these reasons I find that there was no unreasonable behaviour on the Council's part in refusing the application on grounds concerning flood risk. Given that finding, I do not accept that the appellant has incurred any unnecessary or wasted expenditure in seeking to respond to that reason for refusal as part of the appeal.
7. I therefore conclude that the application for a partial award of costs should be refused.

Paul Singleton

INSPECTOR