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## Costs Decision

Site visit made on 17 November 2016

**by Beverley Doward BSc BTP MRTPI**

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

**Decision date: 12 December 2016**

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### **Costs application in relation to Appeal Ref: APP/P2365/W/16/3154166 Turners Farm, School lane, Westhead, Lancashire, L40 6HW**

- 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 Nick Howard for a full award of costs against West Lancashire Borough Council.
  - The appeal was against the refusal of planning permission for part two storey/part single storey extension to rear, with porch to front. Increased roof height to main dwelling without complying with a condition attached to planning permission Ref 2013/0816/FUL, dated 27 September 2013.
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### **Decision**

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

### **Reasons**

2. The 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 this has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
  3. The application for costs is made on the basis that the Council acted unreasonably in relation to substantive matters. Firstly, that in imposing the condition in dispute to the original planning permission the Council erred in its interpretation of the specific requirements of the National Planning Policy Framework (the Framework) and the PPG and secondly, that the Council's refusal of the section 73 application to vary the condition does not stand up to reasonable scrutiny.
  4. The Council's Officer's report which considered the scheme of extensions as permitted indicates that it exceeded the guidance figures set out in the Council's Supplementary Planning Guidance relating to domestic extensions in the Green Belt at the time. It also indicates that it had been reduced in size from that originally submitted. I appreciate that the report is not explicit in explaining that the scheme of extensions as permitted was at the limits of that which could be considered acceptable and thereby complied with the relevant development plan policy and the Framework in relation to development in the Green Belt. Further that any additional volume which may subsequently be added to the building as permitted development would result in inappropriate development which would mean it would not have complied with policy and been refused. However, it is implicit in so far as it clearly states that it was because the scheme had been reduced in size that, on balance, it was now
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considered acceptable and therefore complied with the relevant Green Belt policy in the development plan at the time which related to protecting the Green Belt.

5. Furthermore, in detailing the reason for the condition in the report as being to ensure compliance with the relevant policy of the development plan at the time it seems to me that, even if not explicitly stated, it was nonetheless considered that the condition was necessary, relevant and reasonable to protect the Green Belt and the matter of whether the condition met exceptional circumstances would have been considered within the context of the necessity of the condition.
6. In my consideration of the appeal I concluded that the condition in dispute is necessary, relevant and reasonable to protect the Green Belt with regards to certain classes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). I also found that this justifies the exceptional circumstances required by the PPG. Whilst I have concluded that it is not necessary to include some of the provisions of the condition in dispute as they would not add to the volume of the building so as to result in inappropriate development. I have concluded that it is necessary to retain other provisions as well as including enlargements as provided for under the provisions of Schedule 2 (Part 1 Class B). It is unfortunate that in its consideration of the Section 73 application the Council did not explicitly undertake a class by class assessment. However, in the light of my findings the main provisions of the condition would have remained disputed by the appellant. Accordingly, having regard to all of the above I consider that both the submission of the application subject to this appeal would have been necessary and the appeal would not have been avoided.
7. In its consideration of the Section 73 application the Council's Officer's report refers to the original planning application subject to the condition in dispute being for a scheme of extensions. Accordingly, notwithstanding the references elsewhere in the report to a replacement dwelling, I am satisfied that the Council's assessment of the Section 73 application was made in the knowledge and on the basis that the condition in dispute applied to the permission for a scheme of extensions and was not therefore fundamentally flawed as suggested by the appellant.
8. The PPG advises that identifying the circumstances in the Local Plan where consideration will be given to using conditions can add certainty to the process. The Council's Supplementary Planning Document: Development in the Green Belt October 2015 (SPD) indicates, in the section relating to alterations and extensions to buildings in the Green Belt, that it reserves the right to remove permitted development rights for subsequent development which may have an adverse impact upon the openness of the Green Belt. The same statement is included in a number of other sections in the SPD including that titled 'very special circumstances'. However, as indicated in my decision on the appeal there is no indication that this restriction would apply only in cases that are justified by very special circumstances. Accordingly, I am not satisfied that the Council has acted unreasonably by not following its own guidance in this respect.

## **Conclusions**

9. The PPG indicates that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of costs.
10. For the reasons given above therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, an award of costs is not justified.

*Beverley Doward*

INSPECTOR