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## Costs Decisions

Site visit made on 13 December 2016

**by Elizabeth Jones BSc (Hons) MCTP MRTPI**

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

**Decision date: 20 February 2017**

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### **Costs applications in relation to Appeal Ref: APP/F0114/C/16/3152163 Land at Heath Cottage, Tilley Lane, Farmborough Bath BA2 0BE**

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - **Cost Application A** is made by Bath & North East Somerset Council for a full award of costs against Mr David Hitchings.
  - **Cost Application B** is made by Mr David Hitchings for a full award of costs against Bath & North East Somerset Council.
  - The appeal was against an enforcement notice alleging without planning permission, the erection of the two storey side extension in the approximate position marked in a RED cross on the attached plan.
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1. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

### **Cost Application A**

#### **Reasons**

2. The Council submits that the appellant acted unreasonably in submitting the appeal. Despite being requested to do so no further submissions have been forthcoming from the Council.
3. I consider that the appellant did not behave unreasonably by pursuing his right to appeal against the Council's enforcement notice. The costs incurred by the Council in defending their position were the normal costs arising when the right of appeal is exercised.
4. For the above reasons, and with regard to all other matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

### **Decision – Cost Application A**

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

### **Cost Application B**

#### **Reasons**

6. The appellant submits that the Council acted unreasonably by their misinterpretation of the relevant legislation and ignoring the Government's technical guidance notes. To be precise, the appellant appears to be referring
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to the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (GPDO) and the Government's "Permitted Development for Householders: Technical Guidance" (TG), which were relevant to the appeal on ground (c).

7. The ground (c) appeal turned on whether the development extended beyond a wall forming a side elevation of the "original dwellinghouse". As suggested in my appeal decision, the meaning of the word "original" was clearly set out in the GPDO 2008 and the TG. While the appellant did not provide legal commentary on the meaning of "original" until he made the appeal, the Council ought to have been aware of the provisions of the wording of the GPDO 2008 before it served the enforcement notice.
8. Thus, the Council ought to have considered the front and side elevations of the house as it existed on 1 July 1948. That the front door was relocated when a past extension was built does not alter the statutory definition of 'original' or render it obsolete. From the Council's reference to a 2006 planning application, and subsequent acceptance that the 'original building is not that which currently exists', it follows that the Council's enforcement action and later submissions were based on a flawed interpretation of planning law. This is unreasonable behaviour as defined in the PPG and it caused the appellant to incur the expense of making an unnecessary appeal.
9. For the above reasons, and with regard to all other matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Decision – Cost Application B**

10. The application for an award of costs is allowed in the terms set out below.

### **Costs Order**

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bath and North East Somerset Council shall pay to Mr David Hitchings, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Bath and North East Somerset Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Elizabeth Jones*

INSPECTOR