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## Costs Decision

Site visit made on 30 September 2019

**by Andrew McGlone BSc MCD MRTPI**

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

**Decision date: 7 October 2019**

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### **Costs application in relation to Appeal Ref: APP/P2365/D/19/3233287 Skycastle House, 141 Wigan Road, Lathom L40 6JN**

- 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 Chris Castley for a partial award of costs against West Lancashire Borough Council.
  - The appeal was against the refusal of planning permission for a bay window to front surmounted by pediment; flat roof converted to pitched roof with gable; window to side converted to provide Juliet balcony without complying with a condition attached to planning permission Ref 2016/0799/FUL, dated 27 September 2016.
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### **Decision**

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

### **Preliminary Matter**

2. Although the appeal was linked to another appeal<sup>1</sup> relating to the same site, the application for an award of costs was only made concerning the case about the removal of a planning condition that would enable the occupants of the dwelling to benefit from permitted development rights. The applicant also confirmed that their application is for a partial award of costs.

### **Reasons**

3. The Planning Practice Guidance (the Guidance) 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. In order to be successful, an application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses.
4. The appellant contends that the Council has acted unreasonably by imposing a blanket removal of permitted development rights at the appeal site, despite accepting that the development approved at the time when the condition was imposed, would not cause harm to the openness of the Green Belt. The appellant therefore says that the blanket restriction has been imposed without any proper analysis or justification, and as such was unnecessary and unreasonable, having regard to the Guidance.
5. In granting planning permission in 2016<sup>2</sup> ('the 2016 planning permission') the Council imposed the disputed condition. The approved scheme was to erect a

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<sup>1</sup> Appeal Ref: APP/P2365/D/19/3233284

<sup>2</sup> Council Ref: 2016/0799/FUL

bay window to the front, convert a flat roof to a pitched roof with a gable, and convert a window to the side to a Juliet balcony. While, the Council found that these works were a small increase to the original building, they, along with previous extensions amounted to a disproportionate addition to the original building. This was a reasonable judgement to make, given the scheme before them and the site's planning history. The appellant's own assessment corroborates the Council's view that the volume of the original building had already been extended beyond the threshold set out in Policy GB4 (b) of the Supplementary Planning Document Development in the Green Belt.

6. As set out in my decision, the language used by the Council in assessing openness in granting the 2016 planning permission was not altogether clear. That said, harm was in my view still found and the Council arrived at a judgement that the other considerations of the scheme clearly outweighed the harms to the Green Belt, and thus very special circumstances existed.
7. The National Planning Policy Framework, in relation to the Green Belt, sets out restrictions on the types of building, including the extension and alteration to buildings, to determine whether the works would not be inappropriate. The Guidance does advise that the scope of conditions restricting the future use of permitted development rights need to be precisely defined, and that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning are unlikely to meet the tests of reasonableness and necessity. However, this does not mean that such conditions cannot accord with these tests.
8. It is evident that the disputed condition was imposed by the Council in relation to the 2016 planning permission and not earlier planning permissions, as the former sought to add further extensions to the original building. Thus, the condition was imposed after analysing the site's specific circumstances.
9. The Council have explained how the condition meets the six tests found in the Guidance. As I set out in my decision, the disputed condition satisfies the tests of being reasonable and necessary as further development could potentially add to the existing additions and cause harm to the openness of the Green Belt. Even if I had found that the condition did not accord with the six tests set out in the Guidance, the Council has not acted unreasonably in forming their own view on the condition having regard to the tests and given the clear policy objectives set out nationally and locally. The appellant may disagree, but this does not mean that costs should be awarded. It is also notable that the disputed condition does not prevent the appellant or any future occupant from applying for planning permission for development restricted by the condition. It would then be for the Council to assess such development in the first instance.
10. The other reason for the disputed condition relates to the character and appearance of the area. I did not agree with the Council's rationale for this, but the appellant has not been put to unreasonable or wasted expense in pursuing the appeal given the other reason for the condition.

## **Conclusion**

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

*Andrew McGlone*

INSPECTOR