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## Costs Decision

Site visit made on 13 October 2020

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 10 December 2020**

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### **Costs Application in relation to Appeal Ref: APP/B1550/C/19/3238175 Longacre, Lynwood Nurseries, Arterial Road, Rayleigh, SS6 7XT**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Rochford District Council against Mr A Eden for a full award of costs.
  - The appeal was in connection with an appeal against an enforcement notice alleging a material change of use of the land for the stationing of a mobile home used for human habitation, related structures and works, and the erection of a timber extension to an existing brick-built building.
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### **Decision**

1. The application is refused.

### **Reasons**

2. The application for costs and the arguments advanced for the applicant (Council) were set out in written submissions. As such, I need not repeat them in detail here. The Planning Practice Guidance (PPG)<sup>1</sup> advises that irrespective of the outcome of an appeal, costs may only 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. The PPG lists some examples of behaviour whereby a procedural or substantive award of costs may be justified. The Council seeks costs on substantive grounds in respect of the appeals made on grounds (a), (b) and (d).

#### *Ground (a)*

3. The Council's single argument is that the appellant's case for the development, in terms of material considerations, did not outweigh the harm caused to the Green Belt. However, a full written statement of case and final comments were submitted on behalf of the appellant explaining his reasoning and case as to why planning permission ought to be granted. It cannot be said that his case was devoid of any merit, and although I disagreed and came to a different conclusion on harm to the Green Belt, that does not equate to unreasonable behaviour in the appeal process.

#### *Ground (b)*

4. The ground (b) appeal was made in respect of the timber extension. In this regard the Council's costs claim is made out on the basis that their submitted evidence in respect of investigation, site visits conducted in association with

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<sup>1</sup> Paragraph 030 ref 16-030-20140306

historic planning applications, and the completed planning contravention notice (PCN), demonstrated that the breach did occur as a matter of fact.

5. As set out in the detailed reasons in the appeal Decision the central issue in dispute was whether all of the works undertaken over a period of time amounted to repair/restoration of an existing building, or whether they in total amounted to the construction of a new building. This in part also relied on the condition of the original building in terms of whether it was beyond repair and derelict. Overall, I concluded on the balance of probability that it was a new building and hence that the matters alleged in the enforcement notice had indeed occurred. However, that conclusion required a balancing exercise of the competing documentary and photographic evidence from both parties. In this regard the appellant's explanation and interpretation of the nature of the works undertaken over a period of time was supported with evidence and was not so lacking in merit that it can be said to amount to unreasonable behaviour.

*Ground (d)*

6. This ground of appeal was made in respect of the use of the mobile home (MH) for human habitation. The Council's claim is predicated on an assertion that their submitted evidence to the appeal demonstrated that the appellant had a full time residency elsewhere and not at the site.
7. However, that the appellant also resided at another address during some of the relevant ten year period was not denied by the appellant. In fact his evidence acknowledges that to be the case. His argument rather was that occupation at the other address was only part-time, and during that period his main place of residence was the MH which he believed constituted qualifying time in occupation as part of the ten year period. For reasons set out at paragraph 21 of the appeal Decision I rejected that argument. However, it was not wholly unreasonable for him to hold that view of his circumstances. Moreover, his wider case on ground (d) was supported by other documentary evidence, together with testimony which sought to rebut the Council's evidence (in particular the 2012 PCN). As such, I find that his case was not without any merit whatsoever and falls short of amounting to unreasonable behaviour in the appeal process.
8. For all these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Thomas Shields*

INSPECTOR