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## Costs Decision

Site visit made on 7 December 2020

**by Alexander Walker MPlan MRTPI**

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

**Decision date: 07 January 2021**

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**Costs application in relation to Appeal Ref: APP/D2320/C/20/3258848  
Land to the rear of Nos' 46 and 44 Blackburn Road, Chorley, Lancashire  
PR6 8LH**

- 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 Mrs Diana Towers for a full award of costs against Chorley Borough Council.
- The appeal was against an enforcement notice alleging the change of use of the Land to domestic garden.

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- 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).
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  - The appeal was against an enforcement notice alleging a raised platform consisting of two levels has been constructed on the Land replacing the former slope without the benefit of planning permission.
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### Decision

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

### Reasons

2. Planning Policy Guidance 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 expense in the appeal process.
3. In their delegated report, the Council refer to paragraph 146 of the National Planning Policy Framework (the Framework) under the heading 'Principle of Development', noting that the overall development comprises a material change of use and an engineering operation. It then goes on to correctly apply the test of paragraph 146, which is that the development must preserve the openness of the Green Belt and not conflict with the purposes of including land within it for it to be considered not inappropriate development under this paragraph. The consideration of the effect on openness and the purposes of the Green Belt is carried out in the following two subsections, whereby the Council concludes that the development fails to preserve the openness of the Green Belt and result in an encroachment into the countryside.

4. Whilst my decision concludes differently to that of the Council's, their consideration of the effect on the Green Belt was sufficiently thorough and in accordance with the approach set out in the Framework. I acknowledge that the consideration of the effect on openness in the delegated report is brief; however, it is clear that the reference to 'An undeveloped area has been developed through the raising of land levels and the construction of retaining walls' is an assessment of the spatial aspect of openness. Overall, I do not consider that they have behaved unreasonably in this regard.
5. The appellant argues that the LPA has not acknowledge that occupants of properties can increase the height of their boundary fencing without the need for further consent under permitted development rights. It is not clear whether the appellant is referring to the appeal site or neighbouring properties. If it is neighbouring properties, then these fall outside the appeal site and it would be wholly unreasonable to rely on neighbouring occupants to remedy any unacceptable loss of their own privacy as a result of the development. If it is in regard to the appeal site, the Council state that they are not satisfied that such fences could alleviate the harm to privacy. This could have been addressed in the officer's report and there is an argument that it was unreasonable behaviour not to do so. However, as the Council confirm that it would not alleviate the harm to privacy, I fail to see how unnecessary expense has been incurred. Even if the Council did consider permitted development rights for fences and gates, it is clear to me that they would have concluded that they would not have alleviated the harm and therefore would have maintained their position regarding the loss of privacy.
6. The effect of the development on the living conditions of neighbouring residents in the officer's report is concise, but adequately identifies that there would be harm as a result of the loss of privacy. I acknowledge that the appellant disagrees with this conclusion, as I also do; however, the Council were not unreasonable in coming to this conclusion.
7. The use of photographs can be useful in providing supporting evidence. However, they are not essential, particularly in cases such as that before me whereby the effects of the development can be adequately assessed on site. Furthermore, photographs are very rarely a true representation of what one would see as they may be zoomed in/out, have limited/extended angle width, be from a different height etc compared to the naked eye. The lack of photographs submitted by the Council is by no means unreasonable behaviour.
8. The appellant also argues that the Council have not determined similar cases in a consistent manner. However, the appellant has not referred me to any specific cases. I note that there is built form adjacent to the appeal site. However, there is no evidence before me as to when this took place or whether it benefits from planning permission. Accordingly, there is no evidence that the Council have determined similar cases inconsistently.

## **Conclusion**

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, an award for costs is therefore not justified.

*Alexander Walker* INSPECTOR