



Costs Decision

Site visit made on 7 June 2022 by Darren Ellis MPlan

Decision by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 November 2022

Costs application in relation to Appeal Ref: APP/B3030/D/22/3291514 Hillcrest, 7 Hoveringham Road, Caythorpe NG14 7ED

- 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 & Mrs Kellam for a full award of costs against Newark & Sherwood District Council.
 - The appeal was against the refusal of planning permission for a side extension.
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Decision

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

Procedure

2. An Appeal Planning Officer has set out the recommendation below, to which the Inspector has had regard before deciding the application.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may only be awarded where a party has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG advises that a local planning authority is at risk of an award of costs for preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant contends that the Council incorrectly interpreted what constitutes an 'original building' for the purposes of paragraph 149(c) of the National Planning Policy Framework (the Framework) and that this led to errors in the way in which the Council considered whether the proposal constituted a disproportionate addition to a building in the Green Belt. Had the Council acted reasonably, it would have concluded that the proposal was in accordance with national and local planning policy and granted permission. The unreasonable actions of the Council have therefore led the applicant to incur unnecessary and wasted expense in the appeal proceedings.
5. The Council maintains that it was reasonable to consider the increase in size of the current building compared to the now-demolished previous building together with the scale of the proposed side extension in its determination of whether the proposal constituted a disproportionate addition. This was carried out in the interests of paragraph 138(c) of the Framework, which seeks to safeguard the countryside from encroachment.
6. The Framework defines 'original building' as 'a building as it existed on 1 July 1948, or, if constructed after 1 July 1948, as it was built originally.' The current

dwelling was constructed following the granting of planning permission in 2013 for the demolition of an existing dwelling and the erection of a replacement dwelling¹. It is acknowledged that this definition does not expressly deal with a replacement building. However, the previous building has been demolished and no longer exists, and the current building was constructed after 1 July 1948. It can therefore be taken that the 'original building' in this case is the replacement (current) dwelling itself, as originally built, and that would form the baseline against which subsequent extensions and alterations should be measured.

7. There is nothing in the Framework or local policy to suggest that the previously demolished dwelling still constitutes the 'original dwelling', or that any difference in size between the previous and current buildings should be taken into account when assessing whether the proposed side extension is disproportionate or not. Furthermore, no substantive evidence or case law are before me to support such an approach or for any different interpretation of 'original building'.
8. Although the Council have sought to protect the Green Belt and safeguard the countryside from encroachment, they erroneously included the size of the previous building in their assessment. Their subsequent conclusion is the basis behind the reason for refusal. Had local and national policy been followed correctly then the proposal, as described in the application form, would have been found not to be inappropriate development in the Green Belt and the reason for refusal would not have existed.
9. For those reasons, I find that the way in which the Council approached the question of whether the building would be inappropriate development within the Green Belt was unreasonable on the basis that the Framework's definition of 'original building', when applied to paragraph 149(c) of the Framework, does not allow for a previously demolished building to be taken into account. This has resulted in the appellant having to prepare an appeal submission where the rebuttal of the conflicts against Green Belt policy was unnecessary.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and I recommend that a full award of costs is justified.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

11. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application for an award of costs is allowed as set out in the Order below.

Costs Order

12. 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 Newark & Sherwood District Council shall pay to Mr & Mrs Kellam, the costs of

¹ Planning application ref. 13/01509/FUL

the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Newark & Sherwood District 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

K Taylor

INSPECTOR