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## Costs Decision

Site visit made on 2 August 2024

**by B Pattison BA (Hons) MSc MRTPI**

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

**Decision date: 23 August 2024**

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### **Costs application in relation to Appeal Ref: APP/J1535/W/24/3337078 High Beech Hall, Church Road, Loughton, Essex IG10 4AJ**

- 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 and Mrs Stephen Pledger for a full award of costs against Epping Forest District Council.
  - The appeal was against the refusal of planning permission for construction of a new two storey dwelling with second floor accommodation in the roof, a detached double garage, a new replacement external rear swimming pool, new entrance gates and pillars; and associated site works, following demolition of existing dwelling and outbuildings.
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### **Decision**

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

### **Reasons**

2. Planning Policy Guidance (PPG) 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. The applicant contends that the Council's officer report and reason for refusal is based on an incorrect part of paragraph 154 of the National Planning Policy Framework (2023) (Framework). This is because the reason for refusal states that the proposed replacement dwelling would amount to "disproportionate additions over and above the size of the original dwellinghouse which constitutes inappropriate development". This broadly reflects the wording of paragraph 154 c) of the Framework. The applicant states that, as a consequence, the Council has relied on an incorrect baseline for the assessment of the appeal.
4. In determining the appeal, I have agreed with the applicant that, as the proposal is for a replacement dwelling, the correct Framework paragraph related to the assessment of the proposal is 154 d). This refers to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Similarly, I have agreed with the appellant that caselaw in relation to paragraph 154 d) confirms that the wording 'the one it replaces' must refer to a building as it exists on site now.
5. Furthermore, the applicant states that the Council has relied on incorrect floor area and volume figures in their calculations relating to the size of the existing dwelling at the site and the size of the proposal. This is because the Council do not appear to have taken into account existing outbuildings and extensions at

the appeal site. The Council has not provided a breakdown to explain how they reached their figures for either the existing or proposed buildings at the appeal site. I understand that this must have been frustrating for the applicant.

6. Paragraph 049 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
7. The PPG states that examples of unreasonable behaviour by local planning authorities include 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, and failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
8. Whilst the Council's officer report does not refer to the Framework test for replacement buildings within the Green Belt, I note that both the Council's pre-application enquiry response and the Council's appeal statement do. Notwithstanding this, the lack of clarity and the Council's apparent assessment of the proposal within the officer report against 154 c), rather than 154 d) of the Framework is, in my view, incorrect and does constitute unreasonable behaviour.
9. For the reasons set out in the appeal decision, I assessed the scheme using the applicant's "best case" floor area and volume figures. As expanded upon in the appeal decision, I found that in my planning judgement the proposal would be materially larger than the existing building. Consequently, the Council's unreasonable behaviour in relation to paragraph 154 d) and their reliance on floor area and volume figures which they have not substantiated has not directly led, in itself, to unnecessary or wasted expense. As the scheme was unacceptable, a conclusion that I have also reached, the resultant appeal would likely have arisen even if the Council had specifically referred to 154 d) of the Framework within the officer report. Furthermore, I have also agreed with the Council's findings that the proposal would have a harmful effect on the visual and spatial openness of the Green Belt.
10. The applicant also suggests that the Council has not determined similar cases in a similar manner. My appeal decision reviews the Council's decisions at Warren Hill Lodge (Ref EPF/2104/19), and The Old Cottage (Ref EPF/2516/20). Whilst I accept that larger replacement dwellings have been permitted elsewhere, these types of development are fact sensitive and site specific, turning on the individual circumstances of each case.
11. Having carefully considered the points raised, although I have found that some unreasonable behaviour has occurred, this has not resulted in unnecessary or wasted expense, as described in the PPG. Consequently, the requirements for awarding costs have not been demonstrated. Accordingly, I determine that the costs application should fail, and no award is made.

*B Pattison*

INSPECTOR