



Costs Decision

Site visit made on 23 January 2025

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Costs application in relation to Appeal Ref: APP/B1740/W/24/3340659 77 Burley Road, Bockhampton, Hampshire BH23 7AJ

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972 (as amended), section 250(5).
 - The application is made by Mr Andrew Boulton for a full award of costs against New Forest District Council.
 - The appeal was against the refusal of planning permission for a proposed development described on the application form as, "application for single-storey building originally as outbuilding to 77 Burley Road, Bockhampton".
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
3. As explained in detail in the associated appeal decision, due to its height and scale and close proximity to 79 Burley Road (No 79), the outbuilding is harmful to the living conditions of the occupiers of No 79, even taking account of the mature hedge which is positioned at the edge of the patio to the rear of No 79.
4. The Inspector in appeal decision Refs APP/B1740/C/23/3331915, APP/B1740/C/23/3331916, and APP/B1740/X/24/3340260 (the previous appeals) explained that for permitted development rights under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to apply the use of the host development must be regarded to be in residential use. As the Inspector found that the site is a sui generis mixed use, this permitted development right cannot be exercised. No fallback position exists.
5. Considering the above, the Council were correct to refuse the planning application on grounds relating to the living conditions of the occupiers of No 79. As such, the Council did not make vague, generalised or inaccurate assertions about the outbuilding's impact, which were unsupported by any objective analysis. The Council's behaviour was not unreasonable on this ground.
6. The applicant has mentioned initially being told by the Council that the development was compliant with permitted development rights. This matter was considered in detail through the previous appeals, which means that, even if this constituted

unreasonable behaviour, this matter has not resulted in any unnecessary or wasted expense in the current appeal.

7. At the time the Council's decision was made, the September 2023 version of the National Planning Policy Framework (the Framework) was in force. The Council's Officer's Report referred to the exceptions to inappropriate development in the Green Belt given in Framework, including to paragraph 149 g) of the Framework, which relates to, amongst other things, the partial or complete redevelopment of previously developed land.
8. Although the Council did not discuss the matter of previously developed land in detail in their Officer's Report, the impact of the outbuilding on the openness of the Green Belt was discussed. The Council concluded that the outbuilding would be harmful to the openness of the Green Belt. Therefore, whilst the Council did not draw a direct link between this conclusion and paragraph 149 g) of the Framework, it would not likely have been open to them to find that the outbuilding would not have a greater impact on the openness of the Green Belt than the existing development, which was a requirement under paragraph 149 g) of the September 2023 version of the Framework.
9. Accordingly, based on the version of the Framework in force at the time the Council's decision was made, the Council's conclusion that the outbuilding did not benefit from the exception at paragraph 149 g) was within the range of reasonable options open to them.
10. At the appeal stage, paragraph 154 g) of the December 2024 version of the Framework is in force. This makes reference to development which would not cause substantial harm to the openness of the Green Belt, rather than to not having a greater impact on the openness of the Green Belt than the existing development (as per paragraph 149 g) of the September 2023 version of the Framework). As explained in detail in the associated appeal decision, I found that the outbuilding does not cause substantial harm to the openness of the Green Belt.
11. Taking account of the differing formulations of the relevant exception between the September 2023 and the December 2024 versions of the Framework, the Council were entitled to come to the conclusion at application stage that the outbuilding represented inappropriate development in the Green Belt. Although in the associated appeal decision I concluded that the land occupied by the outbuilding is previously developed land as defined in the Framework, due to it falling within the curtilage of 77 Burley Road (No 77), this is essentially a matter of planning judgement on which opinions can differ.
12. Appeal decision Ref APP/B1740/W/23/3331106 referenced paragraph 154 e) of the Framework, which relates to limited infilling in villages. The Council discussed this appeal decision within their appeal statement. Given the differences between the 2 cases, most notably that appeal decision Ref APP/B1740/W/23/3331106 related to the construction of one dwelling rather than an outbuilding, it was not unreasonable for the Council to consider that appeal decision Ref APP/B1740/W/23/3331106 was not comparable to the present appeal.
13. The Inspector in the previous appeals dismissed the appeal against the Council's refusal to grant a certificate of lawful use or development¹ and concluded that the

¹ For dismantling the outbuilding and relocating it into a different part of the appeal site.

- enforcement notice should require that the outbuilding should be demolished. The applicant has referred to a distinction between 'authorised' and 'lawful'. In this regard, with reference to the PPG², given the Inspector's findings, this is a case where enforcement action may be taken and where an enforcement notice is in force, which indicates that the outbuilding likely does not constitute lawful development. Therefore, it was not unreasonable for the Council to consider the land comprising the outbuilding as not being lawfully developed.
14. The definition of previously developed land given in the Glossary to the Framework refers to, amongst other things, land which has been lawfully developed and is or was occupied by a permanent structure. With regards to the mixed use status of the site, the definition given in the Framework does not refer to the use of a site, but rather to the occupation of land by a permanent structure.
 15. As explained above, it was not unreasonable for the Council to consider the land comprising the outbuilding as not being lawfully developed. The Council provided aerial imagery relating to the history of the site and found that there were no lawfully constructed permanent structures (only sheds) sited on the land in which the outbuilding is sited up until its unlawful construction in 2019. Given the facts presented, this was a rational conclusion, which supported the Council's stance that the outbuilding was not sited on previously developed land as per the definition given in the Framework.
 16. Paragraph 155 of the Framework contains 4 sub-paragraphs (a. to d.) which must be fulfilled for development to not be regarded as inappropriate development in the Green Belt under paragraph 155. This is illustrated in the PPG by a pie chart³, which shows that a demonstrable unmet need for the type of development proposed is an essential component for development to not be regarded as inappropriate in the Green Belt under paragraph 155.
 17. Even if the Council were to find that the development would utilise grey belt land under sub-paragraph a. of paragraph 155, few details were provided to demonstrate that there is a demonstrable unmet need for the type of development under consideration, with reference to sub-paragraph b. of paragraph 155. Considering this, and as the outbuilding is primarily intended to be used for ancillary / incidental purposes to No 77, the evidence does not show that an unmet need for the outbuilding has been demonstrated. It follows that it has not been demonstrated that the outbuilding would benefit from the exception to inappropriate development in the Green Belt found at paragraph 155.
 18. Therefore, even if the Council had provided fuller reasoning within their appeal statement regarding paragraph 155 of the Framework, this was a matter which would still have been required to be contested at final comments stage, meaning that no unnecessary or wasted expense in the appeal process has occurred on this ground.
 19. Taking all of the above into account, I find that the Council did not act contrary to or not follow policy, previous appeal examples, and well-established case law.

² Paragraph 17c-003-20140306

³ Paragraph 64-010-20250225

Conclusion

20. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

Alexander O'Doherty

INSPECTOR