



Costs Decision

Site visit made on 9 April 2025

by **P B Jarvis DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 July 2025

Costs application in relation to Appeal Ref: APP/W/J1915/W/24/3354712 Rock Cottage, Blyth Farm, Gipsy Lane, Hazel End, Herts CM23 1HA

- 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, section 250(5).
 - The application is made by Mr and Mrs Humphreys for a full award of costs against East Herts District Council.
 - The appeal was against the refusal of planning permission for a replacement dwelling.
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Decision

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

Reasons

2. 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.
Unreasonable behaviour may be either procedural or substantive.
3. The Appellants contend that the Council failed to follow best practice outlined in the National Planning Policy Framework (the Framework) in terms of constructive engagement during the planning process, included an unreasonable ground for refusal and failed to reasonably and correctly apply local and national policy in respect of the Green Belt reason for refusal. The Council has not provided any specific response to the Appellants' costs application therefore the content of the officer delegated report (OR) and Council's appeal statement dated 11 December 2024 is relied on.
4. In respect of the first matter, the Framework states that local planning authorities should approach decisions in a positive and creative way but also encourages pre-application engagement and quick decision making. It is unclear if there was any pre-application engagement in this case and the Appellants' undisputed claim is that there was no discussion during the consideration of the application.
5. The PPG states that local planning authorities are at risk of an award of costs with respect to the substance of the matter under appeal where there is a failure to produce evidence to substantiate each reason for refusal. In respect of the air source heat pump, the OR sets out that the Council's Environmental Health department recommended refusal based on the lack of sufficient information and appropriate mitigation to ensure it would not result in excessive noise. It appears that the Appellants were not given the opportunity to address these concerns during the course of the determination of the application by the Council.

6. Furthermore, in the main body of the OR under 'considerations', there is no assessment of the issue nor any explanation of why a condition could not appropriately address the matter. Nor is the matter addressed in the Council's appeal statement. Given that I have concluded in the appeal decision that the matter could be dealt with in this way, this matter should have been addressed more fully. I therefore find that this reason for refusal has not been substantiated nor is there any explanation as to why the Appellants were not given the opportunity to address the matter. In this regard the Council has acted unreasonably.
7. In respect of Green Belt matters the Council's primary justification is contained in the OR. This issue is addressed under the title 'Principle of Development' in the considerations section. That section sets out relevant Framework paragraph 154 in full, confirming that part (d) was the relevant exception. This concurs with the Appellants Planning Statement submitted in support of the application and which also refers to this paragraph as being the relevant exception test.
8. Whilst the OR then sets out comparative floorspace and volume figures, indicating a 6.93% increase in volume and 15% increase in total floorspace, it does not go on to provide any reasoning in respect of the above Framework paragraph to justify a conclusion that the proposed replacement building would be materially larger.
9. The OR then sets out a separate heading of 'openness' finding that the proposal would have 'limited spatial harm' to openness and 'some visual harm' concluding that the proposal would not comply with Policy GBR1 of the East Herts District Plan and the Framework and would have a harmful impact on openness. Again, it makes no specific finding in respect of Framework paragraph 154(d) nor whether the proposal would thus amount to inappropriate development in the Green Belt in respect of this exception or any other.
10. It is only in the reason for refusal itself that it states that the proposed development constitutes inappropriate development, identifying other harm in respect of loss of openness and encroachment into the countryside. Again, there is no explanation as to why the proposal constitutes inappropriate development. Given that the Council's appeal statement relies on the OR no further evidence has been provided in this regard. Nor does the Council's statement address the Appellant's grounds of appeal in this regard, particularly the different figures presented in terms of floorspace and volume increases.
11. On the basis of the above, the Council has not explained how it found the proposed development to be inappropriate development in the Green Belt having regard to the Framework and Policy GBR1. It has thus failed to substantiate the Green Belt reason for refusal. In this respect it has also acted unreasonably.
12. As a result of the above, it seems to me that the Appellant had no option but to appeal the decision. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 East Herts

District Council shall pay to Mr and Mrs Humphreys the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to East Herts 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.

P B Jarvis

INSPECTOR