

Appeal by Jane Bray

49 Bishopstoke Road Bishopstoke Eastleigh SO50 6BF

APPELLANT'S COSTS APPLICATION

Introduction

1. This application and these submissions are made in accordance with the Planning Practice Guidance ("PPG") on costs. An application for a full award of costs is sought on a substantive basis. By refusing the appeal proposals, Eastleigh Council ("the Council") has prevented or delayed development which should clearly be permitted having regard to the development plan, national policy and other material considerations. Straightforwardly, this is not a scheme which should be at appeal. This is a much-needed development, and there were and are no reasonable grounds upon which to refuse permission.
2. This is a proposal which was subject to a full suite of consultation responses. It is considered that the Case Officer has taken an obstructive and overly negative approach and requiring detailed information that can be addressed in subsequent planning conditions. The Inspector will be cognisant of the fact that the site is allocated in the development plan as within the built up area and therefore is

acceptable for new development. The question is, what are the impacts of the proposed appeal scheme over and above the principle of development being acceptable?

3. But for the Planning Officer's refusal, the appeal would not have been required.

Guidance on the award of costs

4. The Appellant draws the Inspector's attention to the following guidance provided in the PPG, that reflects the conduct outlined above and below, noting that one of the purposes of the costs regime is to 'encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay...'² The reasons for refusal do not withstand scrutiny.
5. Under the heading 'What type of behaviour may give rise to a substantive award against a local planning authority,'³ the guidance explains through non- exhaustive examples that 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 may be unreasonable. In this instance, the reasons for refusal demonstrates a failure to engage with the consultation responses and the detailed reports that accompanied the planning application. Detailed analysis of the merits of the scheme, and conclusion that the proposals should be granted planning permission. The evidence that has been put before the inspector in respect of design, trees ecology, flooding and surface water drainage and visual matters exhibits significant mission creep by the case officer, and an attempt to manufacture a case which misunderstands the evidence and does not substantiate any defensible objection.

6. The guidance also sets out the following points in relation to unreasonable substantive behaviour noting that the list is not exhaustive:
- failure to produce evidence to substantiate each reason for refusal on appeal
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 - not determining similar cases in a consistent manner
7. The application is made in accordance with the Planning Practice Guidance.⁴ *'In respect of a written representations appeal In the case of appeals determined via written representations, the costs application must be made in writing by any party no later than the final comments stage. The Planning Inspectorate has the flexibility to set an alternative deadline, which would be notified to all parties. Where the costs application concerns conduct relating to the site visit itself, applications should be received no later than 7 days after the date of the site visit.'*
8. Further details are set out below.

² Paragraph: 028 Reference ID: 16-028-2014030

³ Paragraph: 049 Reference ID: 16-049-20140306

⁴ Paragraph: 035 Reference ID: 16-035-

Background

9. It is important to note that in this instance, that the Council had the benefit of design and ecological advice through the application process.
10. No ecological concerns were expressed in the initial consultation response.
11. The appeal proposal would give rise to a number of benefits in all three dimensions of sustainable development as defined in the 'Framework' but have been disregarded and no proper planning balance has been carried out by the case officer.
12. The Officer's report incorrectly interprets Paragraph 11 which relates to the 'tilted balance'. The fact that the Council can currently demonstrate a Five Year Housing Land supply does lessen the weight that should be given to the appeal proposal and it is wrong to state that only limited weight should be given to the appeal proposal. The appellants argue that significant weight should be given to the appeal proposal which provides a custom designed dwelling for an older person to downsize to.
13. On balance it is considered that cumulatively, the benefits the development would provide significantly and demonstrably outweigh any adverse impacts which the appellant considers do not occur. The Council have failed to carry out this balance correctly or fairly and this amounts to unreasonable behaviour.

Submissions

14. The first reason for refusal is an objection to the alleging the inappropriate siting lack of a buffer and close proximity to the existing TPO'd trees that would result in a cramped development out of character with the area but no substantive evidence has been provided.
15. As to the second, that alleges an over bearing impact, loss of privacy and residential amenity but no substantive evidence has been provided and the appeal proposal complies with SPD
16. Most significantly, the Case Officer, the Council's Ecologist and Tree Officer have fundamentally misunderstood the Technical reports in respect of trees, ecology and surface water drainage and their responses in respect of reasons for refusal 3) 4) and 5) are misconceived, unsustainable and unreasonable.
17. As to the sixth reason for refusal, there was never any doubt that this could be addressed through a planning condition.
18. As set out above this is a proposal that achieved a positive response from the Environment Agency, the Built Heritage Consultant and initially from the Council's Ecologist.
19. The Council has behaved unreasonably, and the unreasonable behaviour has directly caused the Appellant to incur unnecessary and wasted expense in the appeal process for the reasons set out above. Accordingly, the inspector is respectfully asked to grant a full award of costs in respect of the entire appeal process.
20. The Appellant reserves the right to add to and/or amend these submissions prior to the close of the hearing, and to respond to any reply the Council chooses to make.

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Andrew Burgess
Andrew Burgess Planning Ltd