

Mr Sanjeev Sharma
Application for an Award of Costs

Town and Country Planning Act 1990 – Section 78

Application for an Award of Costs in relation to the decision of Eastleigh Borough Council to refuse the grant of planning permission for Ground floor extension and loft conversion at 134 Park Road, Chandler's Ford, Eastleigh, SO53 1HQ

Eastleigh Borough Council application reference H/23/94953

02 August 2023

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1 Introduction

- 1.1 This Award of Costs Statement has been prepared on behalf of the Appellant Mr Sanjeev Sharma in relation to the decision of Eastleigh Borough Council (the 'Council' or the 'LPA') to refuse planning permission for application H/23/94953 in relation to the Ground floor extension and loft conversion at 134 Park Road, Chandler's Ford, Eastleigh, SO53 1HQ.
- 1.2 This statement provides justification for a full award of costs to cover the unnecessary time and expense incurred in the preparation of an Appeal and this Award of Costs appeal as a direct result of the Councils unreasonable behaviour during the determination of the planning application.
- 1.3 This Award of Costs appeal should be read alongside the full Appeal Statement of Case, and in conjunction with the supporting information submitted as part of the planning application.
- 1.4 The planning application was made valid by the Council on 11th April 2023. It was allocated reference number H/23/94953. The application was determined under delegated powers by the Case Officer with the decision notice dated 19th June 2023 citing 2 reasons for refusal:
 1. *The proposed ground floor extension, by reason of its size, scale, location, and the introduction of new materials, would result in a disproportionate, excessive, and cramped addition. It would at odds with the appearance of the host dwelling and have an adverse impact upon the street scene. The proposal is therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), Quality Places SPD (2011), and the contents of the National Planning Policy Framework (2021).*

2. *The proposed side and rear dormers, by reason of their siting and introduction of new materials, would result in incongruous additions, at odds with the appearance of the host dwelling, and the character of the wider surroundings. The proposal is therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), Quality Places SPD (2011), and the contents of the National Planning Policy Framework (2021).*

2 Policy Basis for an Award of Costs

- 2.1 National Planning Practice Guidance (NPPG) is a government website described as 'the home of the National Planning Policy Framework for England and supporting national planning practice guidance'. It was created following the External Review of Planning Practice Guidance prepared by Lord Taylor of Goss Moor and published in 2012.
- 2.2 Paragraph 30 of the NPPG states that 'costs may be awarded where':
 - A party has behaved unreasonably; and
 - The unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process'.
- 2.3 Paragraph 31 of the NPPG advises that 'Unreasonable behaviour in the context of an application for an award of costs may be either':
 - Procedural – relating to the process; or
 - Substantive – relating to the issues arising from the merits of the appeal'.
- 2.4 Paragraph 46 provides further guidance:

'Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal'.

2.5 Paragraph 49 details the type of behaviour that may result in a substantive award of costs. Examples of this 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.
- 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.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner
- failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
- refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage
- imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply

with the guidance in the National Planning Policy Framework on planning conditions and obligations

- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations
- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
- if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

2.6 In this case, this statement seeks to make the case that the Council acted unreasonably substantively, in accordance with the points highlighted in the above paragraphs. The following section expands on this in further detail.

3 Substantive Grounds for an Award of Costs

3.1 This application for costs falls to be determined in accordance with the advice contained in the 'Appeals' section of the NPPG.

- 3.2 The Appellants recognise that, normally, the respective parties are responsible for their own costs and that a precondition of an award of costs is that a party shall have incurred unnecessary or wasted expense in the proceedings. This is an Appeal where the Appellants have incurred unnecessary cost in challenging the refusal of planning permission.
- 3.3 In this case the Appellant considers that the Local Planning Authority has acted unreasonably in that it was incumbent for them to take into account any other material considerations that may have indicated a decision otherwise than in strict accordance with Development Plan policy in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 3.4 It is clear in this case that the fallback position, as a material consideration of significant weight, was summarily discounted. As such, the decision was unreasonable.
- 3.5 In this case, the fall-back position was the use of permitted development rights to achieve the appellant's objectives, as explained in the appeal statement.
- 3.6 The LPA assumed that there was no indication that the fall-back position would be used to achieve the appellant's objectives. However, no effort was made to establish the appellant intentions in this regard and in fact, my client would have no choice but to use permitted development rights to achieve their objectives if this appeal is dismissed.
- 3.7 It has also been demonstrated that the LPA regularly, as is required, properly consider the fallback position of permitted development rights, and therefore it was inconsistent not to consider that there was a possibility, a probability and a likelihood that permitted development rights would be used in this case.

3.8

- 3.9 Against the fall-back position, the proposal offers an uplift in the quality of design, and this should have led to a decision to approve the application, rather than refuse it.
- 3.10 Even if the LPA still considered that the design of the extensions were unacceptable, no effort to engage with the client in relation to the scale of amendment was made. If a more proactive approach were taken, it may have been established that any required change were small and could have been dealt with through amended plans, rather than a whole new planning application.
- 3.11 This behaviour is unreasonable and has resulted in unnecessary costs and delay to the appellants in submitting this appeal.

4 Conclusion

- 4.1 A claim for costs is the appropriate recourse for the Appellant to cover their costs associated with the following:
- Appointing a Planning Consultant to prepare a Statement of Case and supporting documentation.
 - Appointing a Planning Consultant to prepare this Costs Statement.
- 4.2 Having regard to the issues discussed in this Statement of Case, it is respectfully requested that full costs are awarded to the Appellant.