

Town and Country Planning Act 1990

Costs Appeal by

Mr Sanjeev Sharma

134 Park Road, Chandler's Ford, EASTLEIGH, SO53 1HQ

Planning Inspectorate Ref: APP/W1715/D/23/3327140

Local Planning Authority Ref: H/23/94953

COSTS REBUTTAL

On behalf of Eastleigh Borough Council

August 2023

1.0 Introduction

- 1.1 This statement by the Local Planning Authority (LPA) is in response to the Appellant's application for the award of costs against Eastleigh Borough Council, produced by Wessex Planning Ltd, dated 2 August 2023.
- 1.2 It is the LPA's understanding that a cost claim can only be awarded if it is demonstrated that the LPA has acted unreasonably (either procedurally or substantively) during the course of the application, and this has resulted in the Appellant incurring unnecessary costs. As set out within Paragraph: 030 Reference ID: 16-030-20140306 of the Planning Practice Guidance.

2.0 The Appellant's Grounds for an Award of Costs

- 2.1 The LPA refutes the claim that they have acted unreasonably, which has led to unnecessary costs or delays in submitting this appeal in respect to the development. The LPA will respond to the points raised within the Appellant's statement of case below.

2.2 Claim 1:

Paragraph 3.3 of the Appellants Costs Application is noted. The Appellant states that the LPA did not consider alternative material considerations that could have implied a decision differing from strict adherence to the Development Plan policy as outlined in Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Within the Appellant's Appeal Statement, emphasis is placed on family needs, functional requirements, and refusal impact. The Appellant also contends that these circumstances might have merited consideration as material factors, thus warranting approval. However, it is pertinent to clarify that the LPA is bound by specific legal and procedural obligations in the assessment of planning applications. As a public authority, the LPA is compelled to uphold and consistently apply this policy, ensuring fairness and transparency for all applicants.

Although the Appellant's family circumstances are acknowledged, the LPA must weigh a multitude of considerations, including the Local Plan policies, national planning policies, and any other material factors relevant to the proposal. The decision-making process necessitates a meticulous evaluation of these multifaceted components to arrive at a reasoned determination. In this instance, the LPA do not consider that the suggested need for the proposals outweighs the harm arising. As will be expanded upon later within this statement, the LPA advised the Appellant that there were other ways to achieve the required additional living arrangements without resulting in harm. As such, and whilst the personal circumstances

are understood, these alone do not constitute material consideration justifying deviation from planning policies.

2.3 Claim 2:

With regard to Paragraph 3.4 to 3.9 of the Appellants Costs Application, the Appellant's claim that the LPA did not consider the "fallback" position, which entails the Appellant utilising permitted development rights to achieve their objectives, which they noted was an approach that would lead to an inferior proposal.

When the LPA assesses a planning application, its primary responsibility is to consider the merits and characteristics of the proposal that has been officially submitted for review. This assessment involves a rigorous examination of the proposal's compliance with Local Plan policies, national planning policies, and other relevant material considerations. The LPA's decision is thus anchored in the specifics of the proposal that is before them. In this specific instance, the main considerations were the impact upon the character and appearance of the area and impact upon neighbouring amenities.

The term "fallback" refers to an alternative approach that the Appellant could take if their current proposal were not approved. In the context of planning, this might involve utilising permitted development rights to achieve their objectives. While considering alternative scenarios can be informative, it's important to note that the LPA's decision is based on the proposal as submitted, not on potential or speculative courses of action that the Appellant might pursue in response to a refusal.

It is noted that the Appellant could undertake alterations and extensions to the appeal site under 'permitted development'. However, these would need to comply with the specified dimensions set out within the Town and Country (General Permitted Development) Order 2015 (as amended) (GPDO), which is separate to the Legislation considered when determining planning applications. The GPDO also sets out that development must be finished in materials to match the existing. Thus, meaning there is no 'fall-back' position with the proposals as submitted. Further, as set out within the reasons for refusal, the scale and materials of the proposed elements are considered to result in harm, these matters are both controlled via the GPDO.

Ultimately, the LPA aims to maintain a fair and consistent evaluation process that adheres to established planning guidelines and principles. While recognising the potential significance of alternative scenarios, the LPA's immediate focus remains on the proposal that is formally submitted for review and its compatibility with the applicable planning criteria.

2.4 Claim 3:

Paragraph 3.10 and 3.11 of the Appellants Costs Application in relation to the Appellant's assertion that the LPA failed to engage with them regarding

potential amendments to the proposal's design and thereby contributed to unnecessary costs and delays.

To address this point, it is essential to clarify that the LPA did indeed make efforts to communicate with the agent prior to the determination of the application. This engagement sought to apprise the agent of concerns with the proposed design and to offer guidance on a more acceptable approach. Specifically, the LPA advised the agent to consider withdrawing the application and pursuing a pre-application process. This recommendation was based on the understanding that the modifications required to make the application acceptable were likely to result in a materially different scheme. Furthermore, the LPA displayed proactivity by offering post-refusal advice on amending the scheme to enhance the likelihood of a successful future planning application.

It's important to consider that while the LPA aims to engage in negotiations during the planning application phase, constraints on time and resources can limit this possibility. The LPA's primary responsibility remains the timely determination of the application within the stipulated timeframe, which was successfully achieved.

In the LPA's perspective, it diligently fulfilled its duty to reasonably evaluate this planning application and therefore contests liability for costs.

3.0 Conclusion

In accordance with the Planning Practice Guidance – The Awards of Costs, the LPA is of the view that it has not behaved unreasonably, and therefore the Appellant has not occurred unnecessary costs or delays because of the LPA's unreasonable behaviour. As such, The Inspector is respectfully requested to dismiss this claim for costs.