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## Costs Decision

Site visit made on 26 September 2023

**by John D Allan BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 October 2023**

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### **Costs application in relation to Appeal Ref: APP/W1715/D/23/3327140 134 Park Road, Chandler's Ford, Hampshire, SO53 1HQ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Sanjeev Sharma for a full award of costs against Eastleigh Borough Council.
  - The appeal was against the refusal of planning permission for the erection of a ground floor extension and loft conversion.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case or with respect to the substance of the matter under appeal.
  3. The applicant asserts that the Council failed to have proper regard to the potential fallback position of using permitted development rights to achieve their objectives for extending their property. In so doing it is argued that the Council behaved unreasonably with respect to the substance of the matter under appeal and that, had they considered the applicant's full range of options, it would have led to a different conclusion. It is further argued that the Council behaved unreasonably by failing to enter into any proper discussions or negotiations with the applicant.
  4. I accept that the applicant may reasonably have expected the implementation of permitted development rights as a possible fallback position to have been considered by the Council when they determined the planning application. There is no evidence within the officer's report that this took place in relation to the ground floor extensions. However, having regard to the Ministry of Housing, Communities and Local Government's publication *Permitted development rights for householders - Technical Guidance (September 2019)*, it is evident to me that any ground floor extensions that could be constructed as permitted development would have very little in common with the appeal proposal in terms of size or siting. It is also a fact that implementation of any permitted development rights at the appeal property could take the form of a
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- multitude of options and combinations. It would not have been reasonable for the Council to consider all of these or to effectively design an alternative arrangement for the applicant that would have suited their desires.
5. I am unable to detect that any alternative meaningful proposal was put forward at the application stage to give the Council a reasonable steer on this matter. I especially note that the *Design and Access Statement* (DAS), which accompanied the planning application, did not give any indication that the final chosen design evolved from any initial consideration of options that were available to extend the property using permitted development rights. Indeed, the final design closely resembles the initial sketches which are depicted within the DAS. In these circumstances, an assertion by the applicant that the appeal proposal would offer an uplift in the quality of design compared to a permitted development alternative, could not reasonably have been tested by the Council at application stage when so many options existed.
  6. Regarding the dormer windows, from reading the officer's report it is clear that the potential for dormers to be constructed as permitted development was part of the Council's overall considerations.
  7. My own conclusions on the appeal were that the weight attributed to other considerations, including the fallback option of constructing extensions and outbuildings as permitted development, was not sufficient to outweigh the harm that I identified. Therefore, even if the Council's failure to openly attribute weight to the consideration of a fallback is considered to be unreasonable, it is clear that their actions did not result in the applicant incurring unnecessary or wasted expense by progressing an appeal for development that should obviously have been granted planning permission.
  8. The Council clearly relayed their concerns about the proposal to the applicant prior to the decision to refuse planning permission. The applicant's assertion that modifications to the scheme that would not materially have changed the original proposal could have been made, merely reflects a difference of opinion between the two parties. This is not unusual in the determination of a planning application. I do not consider the Council's failure to negotiate upon the scheme that was presented to them as a formal planning application to be unreasonable.
  9. Ultimately, I find that the Council's decision was soundly based on proper planning principles and was properly supported by relevant policies of the development plan. As such and having regard also to my formal decision for the appeal, I do not agree that it led to an appeal that could necessarily have been avoided. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*John D Allan*

INSPECTOR