

Appeal by Mr and Mrs Sinclair

Burlair, Botley Road, Horton Heath, Eastleigh,  
Hampshire, SO50 7DQ

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## **APPELLANT'S COSTS APPLICATION**

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### **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 Borough 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 overly negative approach to the contemporary design. The Inspector will be cognisant of the fact that the principle of extending and remodeling this house is acceptable. 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...' <sup>12</sup> 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,' <sup>13</sup> 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 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. <https://www.gov.uk/guidance/appeals#award-of-costs> <sup>1,2,3</sup>

*'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.

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<sup>1</sup> Paragraph: 028 Reference ID: 16-028-2014030

<sup>2</sup> Paragraph: 049 Reference ID: 16-049-20140306

<sup>3</sup> Paragraph: 035 Reference ID: 16-035-20161210

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## Background

9. It is important to note that in this instance, that the Council had the benefit of design advice through the application process.
10. 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.
11. The appellants argue that significant weight should be given to the appeal proposal which provides a custom designed dwelling for the appellants and their future family.
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 or applied the planning policies correctly, as such this amounts to unreasonable behaviour.

## Submissions

14. The first reason for refusal is an objection to the design alleging the proposal would result in a development that does not reflect or enhance the character of the area and appearance of the area. It claims that the proposed two storey extensions, interior and elevational changes and alteration to the fenestration changes would create a visually dominant and incongruous feature at odds with the character of the area. Put shortly, it represent poor design which would be detrimental to the form and character of the area adversely impacting the street scene and the host property. No substantive evidence, analysis or reasoned argument has been provided to support this proposition.
15. Most significantly, the Case Officer, has fundamentally misunderstood the design proposal and incorrectly assessed the relevant planning policies.
16. While the Officer's report reaches a conclusion it does not carry out a 'planning balance' to weigh and assess the benefits and the harm.
17. The proposed extension is entirely acceptable given its relationship to the character of the area, residential amenities, and to the host building in terms of materials, size, scale and design. The appeal proposal is simply an addition and remodelling of the existing house. No adverse harm to the surrounding character or residential amenity is identified and no parking issues are identified. The application is therefore considered to be acceptable and in accordance with the Framework, the development plan when read as a whole and the Quality Places Supplementary Planning Document.
18. It is accepted that there will be a change but implicit in the Council's reasoning is that the appeal property should act as a transition in respect of design and scale and be subservient to the property to the south and is respect of the host property itself. The appellants are not convinced that such a consideration is relevant or overriding in the context of a proposal to add an additional two storeys to the rear, where the existing property is being completely remodelled and

where the Quality Spaces SPD and the EBLP support innovative designs provided the bulk of the proposal is not excessive and an appropriate pallet of materials is chosen.

19. The suggestion that the extension can overwhelm the existing building is not relevant as the extension is to be completed in conjunction with a complete redevelopment, improvement and resign of the property as a whole. There will be no evidence of the "original" building once completed so the only relevant factor is the completed property will be appropriate in size, scale and design for the area.
20. The proposal will integrate, respect and complement the character of the area in the design and choice of materials proposed.
21. The appellant considers that the appeal proposal complies with Policy DM1 and meets all requirements of the criteria in the policy to achieve high quality development in terms of design and local distinctiveness. The allegation that the proposal conflicts with Policy DM1 is entirely inconsistent and incorrect.
22. The size and scale of the proposal is entirely appropriate for the location and the local environment considering the plot size, street scene, density of development and the copious number of large two storey dwellings elsewhere on Botley Road, Horton Heath.
23. 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.
24. The Appellant reserves the right to add to and/or amend these submissions on receipt of the Council's Statement of Case and to respond to any reply the Council chooses to make.

