

Mr Steve Pryor
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 Conversion of first floor of existing detached garage to C1 AirBnB at Moorgreen Farmhouse, Moorgreen Farm, Burnetts Land, West End, Southampton, SO30 2HH

Eastleigh Borough Council application reference F/23/95117

17 July 2023

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1 Introduction

- 1.1 This Award of Costs Statement has been prepared on behalf of the Appellant Mr Steve Pryor in relation to the decision of Eastleigh Borough Council (the 'Council' or the 'LPA') to refuse planning permission for application F/23/95117 in relation to the Conversion of first floor of existing detached garage to C1 AirBnB at Moorgreen Farmhouse, Moorgreen Farm, Burnetts Lane, West End, Southamton, SO30 2HH.
- 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 26th April 2023. It was allocated reference number F/23/95117. The application was determined by planning committee with members overturning the officer's recommendation to approve. The decision notice dated 15th June 2023 cited 2 reasons for refusal:
 1. *Insufficient information has been submitted to demonstrate whether the originally approved first floor ancillary store and office was implemented and lawfully established for a reasonable period of time prior to the proposed holiday let use, thus would not be considered 're-use' in terms of Policy S5. The change of use would therefore result in an intensification of development within the countryside. The proposals would therefore be contrary to Policies S1, S2, S5 and DM26 of the Eastleigh Borough Local Plan (2016-2036) and the provisions of the NPPF (2021).*

2. *The application fails to provide the required mitigation to offset the impacts of the development upon the European protected Solent Complex (SPA, SAC and Ramsar sites), and New Forest National Park (SPA, SAC and Ramsar sites) from additional recreational pressure and nitrogen loading generated by the population increase and additional sewage resulting from the development. The proposal is therefore contrary to the requirements of Policy DM11 of the Eastleigh Borough Local Plan (2016-2036), the provisions of the NPPF (2021) and the Conservation of Habitats and Species Regulations 2017.*

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 members 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. . It is clear from the minutes and from the reasons for refusal that no other material considerations were taken into account. This is considered highly unreasonable.
- 3.4 The NPPF is clear that visitor uses within well-designed **new** buildings should be enabled. The planning committee took no account of this clear government advice.
- 3.5 In stating that the development would lead to 'intensification of new development within the countryside', the planning committee did not take into account the fact that the LPA had previously found the building, in itself, to be acceptable within the countryside.
- 3.6 If they meant that the usage of the dwelling house would intensify therefore having an impact on the character of the countryside (and they were not clear and the minutes of the meeting do not give any clues), again NPPF advice was not taken into account.

- 3.7 If they meant that traffic would increase leading to a harmful impact on the countryside (and it is not clear this is the case), then they took insufficient account of the fact that their Highways Officer did not object to the use on these grounds, stating that the level of use would be minimal.
- 3.8 Overall, it was unreasonable of the planning committee, as advised by their planning officer, to adhere slavishly to the wording of Policy S5, without considering the proposal as it stood in terms of other material considerations.
- 3.9 This behaviour has been unreasonable resulting in unnecessary costs and delay to the appellants.

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.