

Dr Gary Chaffey
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 a first floor extension and proposed 4-bedroom, two storey end-of-terrace dwelling with associated parking provision at 63 UNDERWOOD ROAD, BISHOPSTOKE, EASTLEIGH, SO50 6FX

Eastleigh Borough Council application reference F/22/94422

15 September 2023

CONTENTS

1	Introduction	3
2	Policy Basis for an Award of Costs	3
3	Substantive Grounds for an Award of Costs	4
4	Conclusion	6

1 Introduction

- 1.1 This Award of Costs Statement has been prepared on behalf of the Appellant, Dr Gary Chaffey in relation to the decision of Eastleigh Borough Council (the 'Council' or the 'LPA') to refuse planning permission for application F/22/94422 in relation to a first floor extension and proposed 4-bedroom, two storey end-of-terrace dwelling with associated parking provision at 63 Underwood Road, Bishopstoke, Eastleigh, SO50 6FX.
- 1.2 This statement provide 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 technical reports and other supporting information submitted as part of the planning application.
- 1.4 The planning application was made valid by the Council on 5th January 2023. It was allocated reference number F/22/94422. The application was determined by planning committee with members overturning the officer's recommendation to approve. The decision notice dated 6th July 2023 cited two reasons for refusal:

1. The proposed development would have a detrimental impact on integrity of adjacent Stoke Park Woods SINC and ancient woodland due to the proximity from the woodland boundary resulting in the increase in physical disturbance, the blocking of a linear feature used by protected species, light pollution and shading all contributing to a significant loss of important biodiversity which is contrary to policy DM11 of the Local Plan.

2. The level of garden provision for the proposed new dwelling would be out of keeping with the existing pattern of development and, due to the awkward shape and resultant overshadowing by adjacent trees, would have a harmful impact on the amenity of future occupiers contrary to policy DM1 of the Local Plan and the guidance set out in Quality Places SPD.

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 for the following reasons:
- 3.4 Initially a proposal for a 2 bedroomed detached dwelling was submitted which followed a positive pre-application enquiry. This was refused on the basis of overdevelopment and being out of character with the area. The plans for this initial proposal are included in the appellants appeal statement.
- 3.5 Following this refusal a meeting took place on site with the planning officer and her manager. An e-mail exchange between the appellant and the planning officer then took place. This e-mail exchange is attached to the appellant's appeal statement at Appendix 1. Two options for a resubmission were discussed, with 'Option 2' the 'attached' dwelling was the 'preferred solution'.
- 3.6 The LPA did raise the concern that the 'preferred solution' was a little large and encroached a little too far towards the southern and eastern boundaries.
- 3.7 The final submission (the appeal application) responded to these concerns and drew the dwelling back from both southern and eastern boundaries.
- 3.8 The officer's report to the planning committee was both professional and thorough. As well as confirming that this dwelling would make a small but important contribution to housing land supply, the case officer address the design in detail. The reasons why the previous

application was unsuccessful was explained and then compared in detail to the new proposal. It was concluded that

"Overall, the proposal is considered to create an acceptable living environment for existing and future occupants. The design of the extension and new dwelling is considered to fit in with the existing street scene and the building line is respected. As such the proposal would be in-keeping with the residential character of the area and would respect the existing pattern of development in accordance with local plan policy DM1."

- 3.9 The committee had no objection to the design of the proposal.
- 3.10 In the minutes of the committee meeting, whilst it was noted that a lengthy debate ensued with members raising concerns *"regarding the impact on ancient woodland adjacent to the application, the small size and overshadowing of the amenity space, the comparison of a current mobile home on site with a permanent dwelling, and the phosphate credit scheme"*, members provided no evidence to support their reasons for refusal.
- 3.11 The officer report, on the other hand, went into great detail in responding to the LPA 's ecologist concerns regarding the ancient woodland, as is expected of a professional planning officer when carefully and intelligently considering the overall planning balance.
- 3.12 The officer detailed the unique circumstances that combined to provide certainty that there would be no harmful impacts upon the ancient woodland/SINC. These unique circumstances are described both within the officer report to committee but also the detailed response provided to the ecologist's concerns by the appellant during the application (contained within Appendix 2 of the appellant's appeal statement.) There was no good reason given by the planning committee to go against their professional officer's advice in this regard. Undue reliance was placed upon the LPA

ecologist's consultation response, the concerns of which had been fully considered and addressed. This constitutes unreasonable behaviour.

- 3.13 In relation to the amenity space reason for refusal, the committee were advised specifically that the amenity space fulfilled the Eastleigh Quality Places SPD. Whilst different in configuration from many of the surrounding dwellings, there are similar 'different' configurations of garden space in the area, as detailed in the appellant's appeal statement. They are not all uniform. There is no character appraisal or other guidance that requires uniformity. Specifically the officer stated:

"The private amenity space provision would be to the side and rear of the proposed dwelling and would be greater than 60% of the proposed floorspace in accordance with the Quality Places SPD (2009). Whilst concerns have been raised regarding the configuration of the garden, it is not within 30m of north and there are no mature trees along the section of woodland edge immediately adjacent to the site. The details of amount of hard and soft landscaping to the front of the existing dwelling and new dwelling are to be agreed through a pre-commencement condition requiring the submission of a landscape design scheme."

- 3.14 The Committee's accusation that the garden would be an 'awkward' shape is not a sufficient reason for refusal. There was no evidence presented by committee members to suggest that the shape of the garden was overly 'awkward.' Additionally, there are no trees overshadowing the garden area on the 'woodland' side of the fence. Both the Ash tree and the Hazel Stool have been removed by Forestry England. The photographs of the site shown at committee demonstrated this and the planning officer was clear in her report of this fact. Yet, despite all evidence to the contrary, overshadowing of the garden was included within the reason for refusal.

- 3.15 This behaviour is also considered unreasonable.

3.16

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.