

Mr Joe Martin
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 Erection of front boundary fencing (Retrospective Application)

25 Southern Road, West End Southampton, SO30 3ES

LPA reference – H/23/95400

29 September 2023

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1 Introduction

- 1.1 This Award of Costs application has been prepared on behalf of the Appellant Mr Joe Martin in relation to the decision of Eastleigh Borough Council (the 'Council' or the 'LPA') to refuse planning permission for application H/23/95400 for the Erection of front boundary fencing (Retrospective Application) at 25 Southern Road, West End, Southampton.
- 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.
- 1.4 The planning application was made valid by the Council on 10th July 2023. It was allocated reference number H/23/95400. The application was determined under delegated powers. The decision notice dated 4th September 2023 cited one reason for refusal:

The front boundary fencing, by reason of its design, height and prominent siting, results in a discordant addition. It has an unacceptable effect on the character and appearance of the street scene. The proposal is therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan (2016-2036), Quality Places SPD (2011), and the contents of the National Planning Policy Framework (2021).

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, on the below basis:

- **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.**
- **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**

2.7 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 the planning officer/the planning officer's manager appeared to place an undue over-reliance on the urban design officer's consultation response (that accompanied the cladding application) and did not independently interrogate its contents.
- 3.4 The planning officer's manager did not conduct a site visit that would have demonstrated that, whilst not a predominant frontage boundary material, high close-boarded fences are not an uncommon feature of the area, and that similar fences exist in close proximity to the appeal site, including on the junction.
- 3.5 The wider street scene did not appear to have been considered at all. Whilst the planning officer had confirmed that she has assessed the application as acceptable due to the proximity of similar fences, the planning officer's manager appears not to have considered the wider street scape at all. Instead the evidence suggests that harm was deduced to have been caused on the basis of the urban design officer's comments about the prevailing frontage boundary treatment.
- 3.6 With no correct reference to the guidance in the local Character Appraisal or the Quality Places SPD, it was unreasonable for the LPA to come to the conclusion that the use of a 'minority' boundary treatment was materially harmful to the overall character of the area. Rather, because there are many examples of high fencing on highway frontages, they should have considered that the fencing is actually in keeping with the character of the area.
- 3.7 There is nothing in law, policy or guidance that suggests that the frontage boundary on this plot should replicate the predominant boundary feature in this area.

- 3.8 The proposal accords with all Local Plan policy and guidance and should have been permitted. The Urban Design officer's comments were not analysed objectively by the planning officer's manager and several vague, inaccurate and generalised assumptions and observations were made that do not stand up to a more rigorous interrogation. It is doubtful as to whether the urban design officer had visited the site.
- 3.9 It is evident that the LPA has taken an inconsistent approach to high fencing in this local area where it is clear that high fencing on nearby frontage boundaries, even on the same junction as the appeal site, are considered acceptable.
- 3.10 The fencing integrates well into the street scene. It is certainly not a discordant feature, and it does not materially harm the character of this established residential area.
- 3.11 The overly negative, and inconsistent approach to the appellants fencing is considered to constitute unreasonable behaviour 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.