

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 Variation of Condition 2 (approved plans) of planning permission F/21/91036 (Erection of detached four-bedroom dwelling and detached garage following demolition of existing dwelling) to replace approved plan PL04 with revised plan PL04 Rev A to allow the as built Hardie Plank weatherboard cladding in anthracite grey (from the approved Pearl Grey)

25 Southern Road, West End Southampton

LPA reference - X/23/95259

29 September 2023

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1 Introduction

- 1.1 This Award of Costs Statement 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 X/23/95259 for the Variation of Condition 2 (approved plans) of planning permission F/21/91036 (Erection of detached four-bedroom dwelling and detached garage following demolition of existing dwelling) to replace approved plan PL04 with revised plan PL04 Rev A to allow the as built Hardie Plank weatherboard cladding in anthracite grey (from the approved Pearl Grey) at 25 Southern Road, West End, Southampton.
- 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.
- 1.4 The planning application was made valid by the Council on 22nd May 2023. It was allocated reference number X/23/95259. The application was determined under delegated powers. The decision notice dated 17th July 2023 cited one reason for refusal:

The colour and amount of cladding in such a colour is considered to have an adverse impact on the street scene. The resultant visual appearance is harmful and out of keeping with the prevailing residential character of the area contrary to local plan policy DM1 of the Eastleigh Borough Local Plan (2016-2036) and the National Planning Policy Framework.

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 placed an undue over-reliance on the urban design officer's consultation response and did not independently review its contents, some of which were incorrect.
- 3.4 The urban design officer confirmed that the darker colour of the cladding was not unacceptable in itself. She also confirmed that the colour was 'recessive'. She suggested the colour was only 'a problem' when set in context within the street scene.
- 3.5 Her analysis for the reasons why the colour was a problem in the street scene was scant. The urban design officer opined that it was the wraparound nature of the darker cladding in an end-stopped view (terminal vista) that increased its impact and made it harmful.

However evidence has been provided within the appeal statement that the wraparound nature of the dark cladding is not visible in this view. The inspector will be able to confirm this on site.

- 3.6 Additionally, the street scene was not, in fact, considered at all. Instead harm was deduced to have been caused from one viewpoint from where the wraparound nature of the cladding could not even be seen.
- 3.7 A street scene, as its name suggests, does not comprise just one stationary view, but is the sum of the 180 degree, moving, visual experience that takes in not just built form, but trees, shrubs, verges, infrastructure, sky etc.
- 3.8 As one travels along Southern Road, the visual field includes many colours and forms that combine to form an overall pleasant suburban experience. The appeal statement evidences that dark grey or black is a common colour found within this visual field, whether that is the tarmac of the road, a tree trunk, the depth of colour of the Copper Beech to the south of the site, a faded dark brown fence or the dark colours of the dense vegetation both in the foreground but also in the background.
- 3.9 To conclude that harm has been caused based on one terminal vista which it is incorrectly suggested that the wraparound nature of the cladding can be seen, and that this harm is predicated on a simple comparison of building materials rather than a consideration of the whole suburban street scene is so insufficient in its professional rigour as to be unreasonable.
- 3.10 The planning officer's analysis is also not professionally independent, but relies on the Urban Design officer's unevidenced opinions and generalised musings.
- 3.11 The planning officer suggests that due to the position of the new dwelling, the 'prominence' of the 'recessive' colour is greater. This

- makes no sense. If a colour is recessive, then it recedes into a street scene. It is the opposite of prominent.
- 3.12 The planning officer also incorrectly states that a mature hedge has been removed when it is clear that it remains. She also incorrectly states that any 'non-matching' material on an elevation would require planning permission. However she quotes Class A of the GPDO which relates only to extensions, not a homeowner's right to alter his/her home without reference to the town planning system provided the change is not considered a material alteration to its external appearance. These observations are simply incorrect.
- 3.13 Not to consider the adopted character appraisal for the area or the requirements of the Quality Places SPD in detail, when one is considering character and materials is a determinative omission in the consideration. If the Character Appraisal and the Quality Places SPD had been properly considered, it would have become clear that there was no requirement to replicate or match materials in this area. Instead, the guidance requires materials to integrate, respect and complement, which is very different to any requirement to match.
- 3.14 It is also contended that the LPA response to the offered landscape scheme as an attempt to hide the dwelling, was overly negative. Such a scheme would have had a softening impact upon the dwelling's presence within the street scene, in the same manner as the existing trees and shrubs along the street
- 3.15 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 and several vague, inaccurate and generalised assumptions and observations were made that do not stand up to a more rigorous interrogation. Indeed, it is doubtful whether the urban design officer made a visit to the site.
- 3.16 When several similar proposals were pointed out to the LPA, they were summarily dismissed as different in context or substance. An overly negative approach involving looking for differences rather than similarities is evidenced in the officer report. This was not a balanced consideration. It is clear that the LPA has taken an inconsistent approach to similar proposals in similar established residential neighbourhoods.
- 3.17 If the appeal is dismissed, it would mean that this colour of cladding would be effectively ruled out from any upgrade to a dwelling's exterior in this area, or perhaps any other similar established residential area within the Borough Of Eastleigh. It is difficult to imagine that this was the intention of the Character Appraisal system, or the Quality Places SPD.
- 3.18 The colour of the cladding integrates well into the street scene, and both respects and complements the materials found within Southern Road.
- 3.19 The overly negative, incorrect and unbalanced approach to the appellants cladding 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.