

Town and Country Planning Act 1990

Costs Appeal by
Mr Oliver Westwood

58 Bright Wire Crescent, Eastleigh, Hampshire, SO50 5SQ

Planning Inspectorate Ref:
APP/W1715/C/23/3329379

Local Planning Authority Ref: ENF/2022/235

COST REBUTTAL
On behalf of Eastleigh Borough Council

January 2024

1.0 Introduction

- 1.1 This statement by the Local Planning Authority (LPA) is in response to the Appellant's application for the award of costs against Eastleigh Borough Council, which has been produced by James Blake of Ken Parke Planning Consultants Limited (dated 22nd January 2024).
- 1.2 It is the LPA's understanding that a cost claim can only be awarded if it is demonstrated that the LPA has acted unreasonably (either procedurally or substantively) during the course of the application, and this has resulted in the Appellant incurring unnecessary costs. As set out within Paragraph: 030 Reference ID: 16-030-20140306 of the Planning Practice Guidance.

2.0 The Appellant's Grounds for Costs

- 2.1 Condition 5 of planning application ref. 04771/124 removed permitted development rights for Class A-H of Part 1, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 1995 (as amended). It is considered that the removal of these rights is unreasonable, unnecessary and unjustified. It is further considered that the removal of these rights by way of condition would likely fail the tests of reasonableness and necessity as outlined in the National Planning Practice Guidance (PPG).
- 2.2 The Appellant has erected a replacement outbuilding on the site, following the removal of a larger outbuilding (within the parameters of what would be allowable under permitted development) which was erected in 2018, without any enforcement action being taken. An outbuilding was first erected on the site in 2009, again within the parameters of what would be allowable under permitted development, without enforcement action being taken.
- 2.3 The 2009 outbuilding stood until the 2018 outbuilding was erected in its place, identifying a history of outbuildings being erected on the appeal site without enforcement action being taken. The current outbuilding, subject of this appeal, falls well within the parameters of what would be allowable under Schedule 2, Part 1, Class E, had these rights not been unjustly removed.
- 2.4 In addition, there are a number of other outbuildings and extensions within the immediate vicinity of the site – and indeed across the wider estate – which have taken place without the Council pursuing enforcement action. It is therefore unclear in this instance why the Council have opted to take enforcement action, where they have not done so previously and where there are other clear examples of outbuildings/other works erected which are not subject to enforcement action.

- 2.5 As such, it is considered that the Council's pursuit of enforcement action is entirely unnecessary, inconsistent and therefore constitutes unreasonable behaviour.
- 2.6 Further, elements of the Council's Statement of Case do not appear to be related to the appeal, with reference to "planning permission not being sought" for boundary treatments. As stated in the Final Comments letter, it is unclear why this has been included as it bears no reference to the appeal matters or Enforcement Notice. In having to respond to these points is wasted resource. Additionally, it is considered that the Council have failed to provide a reasonable response to any of the detailed submissions made by the Appellant in respect of this planning appeal.
- 2.7 The Council's approach to pursuing enforcement on this site has unnecessarily led to the requirement to submit an appeal. It is considered that the reasons cited in the Enforcement Notice are unreasonable and unsubstantiated.
- 2.8 The Appellants therefore respectfully request that an award of costs be granted in favour of the Appellant.

3.0 Response from Eastleigh Borough Council

- 3.1 The LPA refutes all of these claims.

Removal of Permitted Development Rights

- 3.2 As stated on the decision notice for application referenced 04771/124, permitted development rights for Class A-H of Part 1, Schedule 2 of the Town and Country (General Permitted Development) (England) Order 1995 were removed to prevent unplanned overdevelopment of the site and in the interests of residential amenity.
- 3.3 The condition was considered to be reasonable and necessary at the time of imposition in order to prevent unplanned overdevelopment of the site and in the interests of residential amenity. The development represented a higher density residential redevelopment of a former employment site and the removal of permitted development rights was considered an appropriate mechanism to control future development that would otherwise be permitted development. This would allow the LPA to assess all development falling within Class A-H of Part 1, Schedule 2 of the GDPO.

Enforcement History

- 3.4 The Council acknowledges that an outbuilding was previously erected on site. By virtue of its height, scale and the materials used in its construction, it was not considered expedient to enforce against this. The previous outbuilding had a pitched roof and was constructed of materials in keeping with the estate which reduced the visual impact on public amenity. By virtue of its height, roof type and the materials it is constructed of, the current outbuilding is considered to be visually intrusive and creates an imposing presence at the rear of the curtilage which unacceptably affects public amenity.
- 3.5 The impact of the current outbuilding on neighbouring properties is evidenced by comments and reports received in respect of the development. In April 2022, shortly after construction of the outbuilding begun, the Council received a report of a breach of planning control which raised concerns about the proposed use of the outbuilding (given its scale) and the disposal of building materials down public drains. Following neighbour notification of the appeal, a further comment was received which expresses concern about the aesthetic of the outbuilding and its impact on the visual amenity of the area.
- 3.6 The enforcement action taken in respect of 58 Bright Wire Crescent is in accordance with the Council's Local Planning Enforcement Policy.

Estate Planning Control

- 3.7 Whilst it is evident that there are other breaches of planning control across the wider estate, these are not considered to be as visually intrusive or detrimental to the residential amenity of the area. The outbuilding as erected is noticeably larger than other outbuildings/sheds, standing above the boundary fence line and adjacent to an area of designated residential parking.
- 3.8 The estate developed in accordance with permission referenced 04771/124 is under review for other enforceable breaches of planning control.
- 3.9 It is also noted that other residents on the estate, when invited to do so, have applied for retrospective planning permission for development otherwise restricted by the removal of permitted development rights.

Boundary Treatment

- 3.10 At paragraphs 2(iii) and 14 of the Council's Statement of Case there are incorrect references to an unauthorised boundary treatment which is not the subject of the enforcement notice or the appeal for this site.

Engagement with the Appellant

- 3.11 Retrospective Planning Applications had been invited prior to serving the Enforcement Notice but these were not submitted.

4 Conclusion

- 4.1 For the reasons set out above, the LPA considers that they have not acted unreasonably and respectfully requests that the Planning Inspector refuse the costs appeal.