

EASTLEIGH BOROUGH COUNCIL

Town and Country Planning Act 1990

LOCAL PLANNING AUTHORITY'S COSTS REBUTTAL

63 Underwood Road, Bishopstoke, Eastleigh,

Hampshire, SO50 6FX

Appeal by: Dr Gary Chaffey

Planning Inspectorate Reference: APP/W1715/W/23/3334365

Eastleigh Borough Council Reference: F/23/96175

February 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, produced by Wessex Planning, dated 4th December 2023.
- 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 The Appellant's application for costs sets out a number of grounds of what they believe to be unreasonable behaviour:
- Too much weight was applied to the previous refusal by the Bishopstoke, Fair Oak and Horton Heath Local Area Committee in determination of the latest appeal scheme;
 - No site visit was made by the case officer during the course of the planning application;
 - The LPA refused to delay determination of the application to allow the submission of an ecological assessment;
 - No consultation with Natural England; and
 - Refusal of the application has resulted in a further planning appeal having to be submitted.
- 2.2 In response the LPA would provide the following comments.

3.0 LPA Response

Weight applied to previous refusal

- 3.1 On the first point, the Appellant argues that given the previous planning application was originally recommended for approval by officers and only refused by the Local Area Committee, together with the similarities between the two schemes, that officers should have again recommended approval, rather than applying greater weight to the committee decision to refuse. It is suggested that “no independent professional judgement was applied” to consideration of the planning application, and that the only reason the application was refused was “to maintain consistency with the previous refusal” in order to assist the LPA’s defence of the concurrent planning appeal (APP_W1715_W_23_3329598).
- 3.2 In response to these comments, whilst it is acknowledged that the previous application was recommended for approval by officers, the Local Area Committee were entitled to take a differing view. This is discussed in more detail in the LPA’s response to the costs claim in relation to the concurrent planning appeal. Ultimately the decision taken by the Local Area Committee was the decision of the LPA, and as such was considered to be a significant material consideration in determining the second planning application. This refusal was the most recent decision relating to the appeal site, and without an appeal decision to the contrary, together with the very close similarities between the two schemes and lack of evidence provided by the Appellant to overcome the previous reasons for refusal, the LPA had little option but to maintain the same view and again refuse the application.
- 3.3 This consistency of approach is also criticised by the Appellant who is of the opinion that the application was only refused in order to help defend the LPA’s position on the concurrent planning appeal. Whilst the LPA were obviously aware that an appeal to the first refusal had been submitted, this played no part in the determination of the second application, which was determined on its own merits. The LPA always tries to provide a consistent approach in its decision making in order to ensure that applications are dealt with in a fair and

reasonable manner. Had the second scheme been considered acceptable and to have overcome the previous reasons for refusal, the LPA would have been happy to approve it. However, that was not the case.

Lack of site visit

- 3.4 It is acknowledged that no specific site visit was undertaken during consideration of the appeal application. However, the case officer was very familiar with the application site and locality, including Stoke Park Woods, having lived in and worked for the Borough for twenty years. They were also the case officer for a previous application on the appeal site (F/08/64127). Given this local knowledge, together with comprehensive site photographs taken by the previous case officer for application F/22/94422, and satellite imagery available via sources such as Google Earth, it was clearly evident that the site and immediate surrounding circumstances and context had not changed. As such, a further site visit was not deemed necessary.

Failure to delay determination of the application

- 3.5 It is sighted that the LPA's failure to delay determination of the application in order to allow the submission and review of an ecological appraisal which was requested by the case officer was unreasonable. In response, the LPA would firstly highlight that at no point during the course of the application was an ecological appraisal specifically requested, rather it was suggested that such a document would have been expected in support of the application given one of the previous reasons for refusal related to the developments impact upon the adjacent SINC. This suggestion was made to the Appellant's agent on 11th October, two days after submission of the application, as is evident in E-mails within Appendix 2 of the Appellant's costs claim. An update was provided by the Appellant's agent on 26th October in relation to being unable to employ an ecologist, with no further correspondence from the agent until 30th November after being informed that the LPA intended to refuse the application.
- 3.6 Ultimately the onus is on the Appellant to provide all the necessary information at the time of the application's submission. It was their choice not to submit an

ecological appraisal and there was no duty on the LPA to request or suggest submission of such a document. It is the opinion of the LPA that had pre-application discussions taken place, the need for an ecological appraisal would have been highlighted. Even without pre-application discussions, the need for such a document would have been relatively evident given the previous reason for refusal.

- 3.7 Notwithstanding the above, the LPA were of the opinion that the revised scheme was still not acceptable in relation to its layout and the quality of external amenity provision. Therefore, the application was again to be recommended for refusal. A delay beyond the application eight week date of 4th December for the submission and assessment of an ecological appraisal would not have therefore impacted the ultimate outcome to the application. As such, a delay in determination of the application would have served no useful purpose.

No consultation with Natural England

- 3.8 The Appellant is of the view that had Natural England been consulted on the application that they would have raised no objection and that this would have demonstrated no adverse harm upon the neighbouring SINC and Ancient Woodland.
- 3.9 It is correct that no consultation with Natural England was undertaken, nor a full Habitats Regulation Assessment completed. This was due to the LPA's intention to refuse the application, meaning that formal consultation with Natural England was not required. Had the LPA intended to approve the application then Natural England would have been consulted but only in relation to the development's impact upon nationally and internally designated nature conservation sites, i.e. the development's impact upon water quality of the Solent SPAs through increased wastewater. Natural England do not comment upon locally designated nature conservation sites, such as Stoke Park Woods SINC, which is left to each local authority's own specialist ecologists. As such, a no objection response from Natural England would not have overruled the LPA's own

Ecologist's opinion or resulted in the previous reason for refusal being overcome.

Refusal resulting in a further planning appeal

- 3.10 Whilst the LPA accepts that the Appellant obviously has a differing opinion as to the decision which should have been made, ultimately the decision to appeal is their own.

4.0 Conclusion

- 4.1 Whilst the Appellant's disappointment with the refusal of the application is noted, the LPA is of the view that it did determine the application on its own merits, based on the information provided at the time of the application, and was entirely consistent in its approach.
- 4.2 As such, and in accordance with the Planning Practice Guidance – The Awards of Costs, the LPA is of the view that it has not behaved unreasonably. Furthermore, the Appellant's cost application does not clearly demonstrate how the LPA's alleged unreasonable behaviour has resulted in unnecessary or wasted expense. As such the LPA respectfully requests that the Appellant's costs application is dismissed.