

Town and Country Planning Act 1990

Costs Appeal by Alex Munday Planning on behalf of Mr
Steve Cole

32 Bradshaw Close, Fair Oak, Eastleigh, SO50 7BS

**Planning Inspectorate Ref:
APP/W1715/D/23/3335724**

Local Planning Authority Ref: H/23/94919

COST REBUTTAL
On behalf of Eastleigh Borough Council

March 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 Alex Munday Planning, dated 19 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 an Award of Costs

- 2.1 The Appellant contends that the LPA acted unreasonably by continuing to pursue a planning application for the retention of a raised patio, despite previous written confirmations that planning permission was not required.
- 2.2 The Appellant further contends that Committee Members sought to refuse an application that Planning Officers had recommended for approval. They note that the decision was made without the benefit of a site visit and consider that it was not based on the factual evidence presented in the Officer Report, thus resulting in incurred expenses as part of this appeal.

3.0 LPA's Response

3.1 *Pursuit of Planning Application for Patio Retention*

- 3.1.1 The LPA acknowledges the Appellant's contention regarding the pursuit of a planning application for the retention of the patio. However, it is important to note that the application under consideration encompasses not only the raised patio but also the retention of the western and northern boundary fence. While there are no issues regarding the boundary fence, it is crucial to understand that the LPA cannot selectively approve parts of an application. Thus, the Appellant is required to continue the application process for the entirety of their proposal.
- 3.1.2 Planning regulations, particularly those concerning Permitted Development Rights, can be complex and often require detailed assessment. Multiple site visits were conducted to thoroughly assess whether the raised patio could indeed be considered under Permitted Development Rights. Upon thorough evaluation, it was concluded that any part of the raised patio exceeding 30cm above the ground could not be classified as permitted development. Therefore, planning permission was deemed necessary, and the Appellant was duly advised to continue with the application process to ensure compliance with planning regulations.
- 3.1.3 It is imperative to emphasise that throughout the application process, the Planning Officer maintained open and frequent communication with the

Appellant. This proactive approach ensured that the Appellant was kept informed at every stage of the process, in relation to the patio and planning regulations.

3.2 *Unreasonable Refusal by the Planning Committee*

- 3.2.1 The Appellant contends that it was unreasonable for the Planning Committee Members to overturn the Officer's recommendation.
- 3.2.2 The LPA would like to draw the Inspector's attention to the Council's Constitution (<https://www.eastleigh.gov.uk/media/13485/the-constitution-of-the-council-sept-2023.pdf>), which outlines when decisions can be delegated and when they are to attend the Planning Committee.
- 3.2.3 For clarity, the Constitution requires that planning applications be determined at Committee if three or more Members of that specific Committee request it. In this instance, as outlined in the Officer Report, four Councillors: Councillor Louise Parker-Jones (who is the Chair of this specific Committee (BIFOHH), Councillor Steven Broomfield, Councillor Michelle Marsh, and Councillor Nicholas Couldrey requested this application be determined at the Committee.
- 3.2.4 When taking an application to the Committee, Planning Officers are present to advise and assist Members in decision-making. However, Members are not obligated to agree with the Officer's recommendations and have the authority to exercise independent judgment in reaching decisions.
- 3.2.5 Despite the absence of a site visit, Members carefully considered the factual evidence presented in the Officer Report and visual presentation which included detailed annotated photographs of the appeal site and adjacent neighbouring properties. A written statement from the neighbour was read out to the Committee; Councillors asked questions of the Planning Officer and debated the merits of the application proposals. Their decision was based on a thorough review of the information available to them and, whilst reaching a different conclusion to the Planning Officer, the decision was based on sound planning grounds and supported by adopted Local Plan policy. Therefore, this does not constitute unreasonable behaviour.

4.0 Conclusion

- 4.1 The LPA has consistently engaged with the Appellant throughout the process, making diligent efforts to clarify and resolve interpretations of planning regulations, and ensure compliance regarding the raised patio.
- 4.2 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 Appellants costs application is refused.

