

Appeal by Daniel Bowers re. Willow Bee, Allington Lane, Eastleigh

Eastleigh Borough Council's reference: F/23/95507

Application for reimbursement of the Appellant's appeal costs.

1. Section 16-030-20140306 of Planning Practice Guidance (PPG) indicates that costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary expense in the appeal process.
2. The appeal site is situated on the west side of Allington Lane, in the West End sector of Eastleigh Borough Council's administrative area. Approaching the appeal site from the north on Allington Lane, one passes several entrances that stand back from the carriageway behind splayed hard-standings that are contained by walls or fences - they are so numerous and notable that they comprise a significant characteristic of the locality, which is 'developed countryside'.
3. Access to 'Willow Bee' from Allington Lane (C194) was previously gained via a simple verge crossing where visibility was limited; a pair of dilapidated gates at the back of the verge caused vehicles to wait within the carriageway while the gates were opened and closed. Following the designs of existing gateways in Allington Lane as his model, Daniel Bowers replaced the gateway in February-April 2023 with an arrangement which followed the model presented by several 'means of enclosure' in the locality.
4. Hampshire Highways recorded its view that "*There is no objection in principle to the proposals from a highway perspective...the benefits of the new access outweigh the benefits of the retention of use of the old, from a highway perspective.*"
5. The Delegated Officer Report recorded that determination of the application turned on eleven policies of the Eastleigh Borough Local Plan 2016-2036 but the decision notice alleged non-compliance with only one - S5 re 'New development in the countryside'. Policy S5 comprises a list of seven acceptable development categories but '*means of enclosure*' is not included. It should have been evident to the Officers and Members of Eastleigh Borough Council from the outset that proposals would likely come forward during a twenty-year Local Plan period that were not originally anticipated; their failure to explicitly include 'means of enclosure' within Policy S5 should not have led to an automatic rejection of Daniel Bowers' application.
6. Section 38 of the Planning and Compensation Act 2004 requires an application or appeal to be determined in accordance with the relevant policies of the development plan *unless material considerations indicate otherwise*. The Officers were not obliged to refuse Daniel Bowers' application simply because '*means of enclosure*' was not a nominated category of acceptable development in Policy S5. As the new gateway would improve access to and from Allington Lane and reiterated an arrangement which has become a notable characteristic of the locality, the Officers' failure to accord weight to those *material considerations* constituted unreasonable behaviour.
7. Daniel Bowers should not have been obliged to prosecute this appeal in order to secure the positive decision that he needs to retain a means of access that is a marked improvement over the historic arrangement and reiterates characteristics that are evident along Allington Lane; he has thereby incurred unnecessary expenditure. The Secretary of State for Levelling-Up, Housing and Communities is requested to direct Eastleigh Borough Council to fully reimburse Mr Bowers for the costs that he has been obliged to incur in the prosecution of this appeal. Thank you.