

EASTLEIGH BOROUGH COUNCIL

**Town and Country Planning Act 1990 (As Amended by the
Planning and Compensation Act 1991) – Section 78**

LOCAL PLANNING AUTHORITY'S COSTS REBUTTAL

**Replacement entrance gate, hardstanding and frontage
fence (Retrospective).**

Willow Bee, Allington Lane, Eastleigh, SO30 3HP

**Appeal by:
Mr Daniel Bowers**

**Planning Inspectorate Reference:
APP/W1715/W/23/3335998**

**Eastleigh Borough Council Reference:
F/23/95507**

April 2024

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1. 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.
- 1.2 It is understood by the LPA that a cost claim can only be awarded when it can be demonstrated that the LPA has acted unreasonably in a procedural or substantive way during the application process which has resulted in the Appellant incurring unnecessary costs.

2. Appellant's Grounds for Costs

- 2.1 The LPA refutes the claim that they have acted unreasonably, which has led to unnecessary costs or delays in submitting this appeal in respect to the development. The LPA will respond to the points raised within the Appellant's statement of case below.

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.

- 2.2 Paragraph: 006 Reference ID: 21b-006-20190315 of the Planning Practice Guidance (PPG) states that "To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise".
- 2.3 Paragraph: 009 Reference ID: 21b-009-20140306 of the PPG states that "The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a decision for the courts. Provided regard is had to all material considerations, it is for the decision maker to decide what weight is to be give to the material considerations in each case, and (subject to the test of reasonableness) the courts will not get involved in the question of weight.".
- 2.4 In this case, the development plan (Eastleigh Borough Local Plan 2016-2036), which was adopted in April 2022 holds substantial weight when determining

planning applications. This decision was made in October 2023, which is only 18 months post local plan adoption, which is a recent adoption when set within a 20-year plan period.

- 2.5 It is not considered unreasonable behaviour to determine the application within the parameters of the development plan and weigh other factors up within the planning balance. Nonetheless, the application was not refused purely due to fact a 'means of enclosure' is not defined within policy S5 and more related to appropriate development within the countryside, considering the clear policy direction of policy S5.
- 2.6 The decision of the LPA took into account all material considerations during the determination process of the application and as such acted reasonably and in accordance with the PPG.

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.

- 2.7 The LPA agreed to a requested extension of time on the application allowing for the submission of more documentation (including a Biodiversity Enhancement Management Plan and Surface Water Drainage Statement) so that the number of reasons for refusal could be reduced from what was originally proposed. This was achieved through efficient communication with the planning agent throughout the process. Ultimately, the role of the LPA is to determine the application that is in front of them within the designated timescale, and this was achieved.
- 2.8 The LPA encourages and recommends that applicants first go through the pre-application service that is available before submitting the full application. This service would provide an officer's feedback and proactive comments on suitable amendments for the scheme. However, this application was made retrospectively, except for proposed landscaping.
- 2.9 It is the LPA's view that it has exercised their duty to determine this planning application in a reasonable manner and should therefore not be liable for costs.

3. Conclusions

- 3.1 In accordance with the Planning Practice Guidance – The Awards of Costs, the LPA is of the view that it has not behaved unreasonably, and therefore the

Appellant has not occurred unnecessary costs or delays because of the LPA's unreasonable behaviour. As such The Inspector is respectfully requested to dismiss this claim for costs.