

Mr Patrick Reilly
Application for an Award of Costs

Town and Country Planning Act 1990 – Section 78

Application for an Award of Costs in relation to the decision of Eastleigh Borough Council to refuse the grant of planning permission for Construction of 7 bedroom detached dwelling over three levels and associated landscaping following demolition of existing dwelling at CHERRY COURT, SALTERNS LANE, BURSLEDON, SOUTHAMPTON, SO31 8DH

Eastleigh Borough Council: F/24/97376

07 October 2024

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1 Introduction

- 1.1 This Award of Costs Statement has been prepared on behalf of the Appellant Mr Patrick Reilly in relation to the decision of Eastleigh Borough Council (the 'Council' or the 'LPA') to refuse planning permission for application F/24/97376 in relation to the Construction of 7 bedroom detached dwelling over three levels and associated landscaping following demolition of existing dwelling at Cherry Court, Salterns Lane, Bursledon, Southampton, SO31 8DH.
- 1.2 This statement provide justification for a full award of costs to cover the unnecessary time and expense incurred in the preparation of an Appeal and this Award of Costs appeal as a direct result of the Councils unreasonable behaviour during the determination of the planning application.
- 1.3 This Award of Costs appeal should be read alongside our full Appeal Statement of Case, and in conjunction with the technical reports and other supporting information submitted as part of the planning application.
- 1.4 The planning application was made valid by the Council on 24th May 2024. It was allocated reference number F/24/97376. The application was determined by planning committee with members overturning the officer's recommendation to approve. The decision notice dated 11th September 2024 cited three reasons for refusal:
 1. *The proposed development by virtue of its size, scale, bulk, form and appearance is not considered to be appropriate for or sympathetic to the character of the Old Bursledon Conservation and Special Policy Areas, particularly when viewed from the public realm. As such, the application is considered to be contrary to Policies DM1, DM12 and BU7 of the Eastleigh Borough Local Plan 2016-2036, and the Council's 'Quality Places' and 'Old Bursledon*

Conservation Area Appraisal and Management Proposals' Supplementary Planning Documents.

2. *Insufficient evidence has been provided to demonstrate that the proposed development will not result in harm to the appearance of the Old Bursledon Conservation and Special Policy Areas when viewed from the River Hamble and its eastern bank both during the day and when illuminated at night. As such, the application is not considered to accord with the requirements of Policies DM1, DM12 and BU7 of the Eastleigh Borough Local Plan 2016-2036, and the Council's 'Quality Places' and 'Old Bursledon Conservation Area Appraisal and Management Proposals' Supplementary Planning Documents.*
3. *Inadequate justification has been provided for demolition of the existing dwelling, and it has not be demonstrated that its removal or replacement would enhance or improve the character and appearance of the Old Bursledon Conservation Area, contrary to Policy DM12 of the Eastleigh Borough Local Plan 2016-2036, and the Council's 'Old Bursledon Conservation Area Appraisal and Management Proposals' Supplementary Planning Document.*

2 Policy Basis for an Award of Costs

- 2.1 National Planning Practice Guidance (NPPG) is a government website described as 'the home of the National Planning Policy Framework for England and supporting national planning practice guidance'. It was created following the External Review of Planning Practice Guidance prepared by Lord Taylor of Goss Moor and published in 2012.
- 2.2 Paragraph 30 of the NPPG states that 'costs may be awarded where':
 - A party has behaved unreasonably; and

- The unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process’.
- 2.3 Paragraph 31 of the NPPG advises that ‘Unreasonable behaviour in the context of an application for an award of costs may be either:
- Procedural – relating to the process; or
 - Substantive – relating to the issues arising from the merits of the appeal’.
- 2.4 Paragraph 46 provides further guidance:
 ‘Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal’.
- 2.5 Paragraph 49 details the type of behaviour that may result in a substantive award of costs. Examples of this include:
- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - failure to produce evidence to substantiate each reason for refusal on appeal
 - vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
 - acting contrary to, or not following, well-established case law
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
 - not determining similar cases in a consistent manner
 - failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
 - refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage
 - imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations
 - requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations
 - refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
 - not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

- if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

2.6 In this case, this statement seeks to make the case that the Council acted unreasonably substantively, in accordance with the points highlighted in the above paragraphs. The following section expands on this in further detail.

3 Substantive Grounds for an Award of Costs

- 3.1 This application for costs falls to be determined in accordance with the advice contained in the 'Appeals' section of the NPPG.
- 3.2 The Appellants recognise that normally the respective parties are responsible for their own costs and that a precondition of an award of costs is that a party shall have incurred unnecessary or wasted expense in the proceedings. This is an Appeal where the Appellants have incurred unnecessary cost in challenging the refusal of planning permission.
- 3.3 In this case the Appellant considers that the Local Planning Authority has acted unreasonably for the following reasons:-
- It has prevented and/or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
 - The clear advice of the planning committee's planning officer, in his written report, and committee presentation, was that the proposal accorded with all relevant policies of the Local Plan and SPD. No consideration or evidence was offered at planning

committee to substantiate the vague reasons given for refusal which were, in any case, delegated back to officers.

- In terms of the proposals size, this is just over 20% increase in volume, well within the 25% allowed by Policy BU7.
- In terms of scale and bulk, form and appearance, several iterations were discussed with officers and the Design Review Panel to ensure that the dwelling was well articulated, that the external materials for the ground floor were dark, and therefore receded into the hillside and that louvres/shutters were included to break up the mass of glazing. It was unreasonable for the planning committee to refuse the proposal on these grounds without providing any substantiation. No evidence was provided to substantiate any of these issues at planning committee. All reasons are very vague and generalised and no objective analysis was provided on the design, whatsoever.
- Evidence has been provided by the appellant that the proposals result in betterment rather than harm in the views from the public realm, especially at night. Members should have understood that the night time views of this area from the River Hamble at night are of street lights and the internal lights from dwellings interspersed with dark vegetation, and as a replacement dwelling there could and would be betterment in this regard. In addition, little thought was given to the fact that it is extremely unlikely that a walker would use the public footpath adjacent to the site, at night. This planning committee members are local area members familiar with the area, and so it was unreasonable to claim that this issue could have led to harm
- Finally, it was clear that Members did not have a clear understanding of their own Conservation Policy. A previous version of the Eastleigh Borough Local Plan required justification for any demolition within the Conservation Area. Members

expressed the view, at committee, that this policy should not have been removed from the current local plan. However, it was unreasonable to apply a policy from a previous local plan to this proposal.

- 3.4 This behaviour has been unreasonable resulting in unnecessary costs and delay to the appellants.

4 Conclusion

- 4.1 A claim for costs is the appropriate recourse for the Appellant to cover their costs associated with the following:
- Appointing a Planning Consultant to prepare a Statement of Case and supporting documentation.
 - Appointing a Planning Consultant to prepare this Costs Statement.
- 4.2 Having regard to the issues discussed in this Statement of Case, it is respectfully requested that full costs are awarded to the Appellant.