

Mr A Potts
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 a two storey extension to the existing outbuilding following the demolition of the existing metal access stairs and balcony to include a new dormer new canopy and alterations to fenestration at Cricketwood, Tanhouse Lane, Botley, Southampton, SO30 2SZ

Eastleigh Borough Council H/25/98737

27 May 2025

CONTENTS

1	Introduction	3
2	Policy Basis for an Award of Costs	3
3	Substantive Grounds for an Award of Costs	4
4	Conclusion	7

1 Introduction

- 1.1 This Award of Costs Statement has been prepared on behalf of the Appellant Mr A Potts in relation to the decision of Eastleigh Borough Council (the 'Council' or the 'LPA') to refuse planning permission for application H/25/98737 in relation to the application for a two storey extension to existing outbuilding following the demolition of the existing metal access stairs and balcony to include a new dormer, a new canopy and alterations to fenestration at Cricketwood, Tanhouse Lane, Botley, Southampton, SO30 2SZ.
- 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 unnecessary appeal. This costs application is made as a direct result of the Councils unreasonable behaviour during the determination of the planning application which has led to this appeal.
- 1.3 This costs application should be read alongside the full Appeal statement, and in conjunction with other supporting information submitted as part of the planning application.
- 1.4 The planning application was made valid by the Council on 14th January 2025. It was allocated reference number H/25/98737 to the application. The application was determined by a planning officer under delegated authority. The decision notice, dated 4th April 2025, cited 1 reason for refusal:

The proposed alterations and extensions to the existing outbuilding, by reason of their mass, scale, and independent functionality, would transform the modest ancillary structure into a four-bedroom residential unit, amounting to a new dwelling in the countryside that is unacceptable in principle under Policy S5 of the Eastleigh Borough Local Plan (2016-2036). This increased scale would also fail to respect the host dwelling and rural character of the countryside, contrary to Policies DM1 and DM26 of the Eastleigh Borough Local Plan (2016-

2036), Quality Places SPD (2011), and the contents of the National Planning Policy Framework (2024).

2 Policy Basis for an Award of Costs

- 2.1 National Planning Practice Guidance (NPPG) paragraph 30 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.'
- 2.2 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.'
- 2.3 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.'
- 2.4 Paragraph 49 details the type of behaviour that may result in a substantive award of costs. From this list, the appellant considers the following are applicable to this appeal:
 - 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.
 - refusing planning permission on a planning ground capable of being dealt with by condition risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead

- 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

2.5 In this case, this statement seeks to make the case that the Council acted unreasonably substantively, in accordance with the points highlighted above. 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 both in the instruction of a planning consultant to write the appeal statement but also in writing this costs application.

3.3 In this case the Appellant considers that the Local Planning Authority has acted unreasonably in that:-

3.4 The whole premise of the LPA's reason for refusal was due to two dated planning conditions attached to the original planning permission in 2004 that effectively tied the use of the outbuilding to 'incidental' use only. The condition states:

"3) The garage/store hereby permitted shall not be converted to living accommodation without the prior written permission of the Local Planning Authority. Reason:

In order to comply with countryside and agricultural dwelling policies. "

4) The building the subject of this permission must be used only for the purposes incidental to the enjoyment of the dwelling house and shall not be used for any business, commercial or industrial purposes whatsoever. Reason: To protect the amenities of nearby residents.

3.5 The Inspector will be aware that permission is not required for an existing outbuilding within a residential planning unit to be used for 'ancillary' residential use and therefore this condition meant that the garage would need to be retained in 'incidental' use.

3.6 The reason for condition 3 was due to the fact that the original host dwelling began life as an agricultural dwelling whose floor area was limited by Local Plan policy at that time to 120 square metres. By restricting 'ancillary' usage of the outbuilding, the condition would have controlled the total amount of residential floor area (primary or ancillary) so as to be compliant with agricultural dwelling policy.

3.7 In 2017, however, the agricultural tie was lifted, and the house has been subsequently extended. There is no policy basis for disallowing 'ancillary' use in an existing outbuilding for a non-tied dwelling.

3.8 Therefore, there is no 'in principle' restriction on either the floor area of the main dwelling or that of an outbuilding, subject to normal 'countryside' policies. As the existing building is already in existence, there was no justification for revisiting the original condition.

3.9 It is considered therefore that the LPA, did not properly understand the reasons that the original planning conditions were attached to the outbuilding's planning permission when it assessed the appeal application. This misunderstanding unreasonably and unfairly infected the whole planning assessment process.

- 3.10 It is clear that the LPA assessed the application as if the existing building 'should have been' currently in 'incidental' usage, rather than its actual ancillary residential usage. This use was properly described in the submitted Design and Access Statement and was also viewed on site by the planning officer who confirmed on site that there were no concerns with the proposal.
- 3.11 The LPA were informed that the outbuilding was already in ancillary residential usage and had been for over 10 years and that the application was merely for an extension to what was already in existence, and for good and material planning reasons.
- 3.12 It appeared that this information made it difficult for the planning officer to reconsider her trajectory to refusal as, in the mind of the planning officer and her manager, they appeared to consider the outbuilding was being extended from a garage to something that had become '*tantamount to an independent dwelling within the countryside.*'
- 3.13 This incomplete assessment was intentional as it knowingly refused to take the inconvenient detail of the existing circumstances into account. The LPA in fact 'closed their minds' to a legitimate material planning consideration which would have been determinative in the decision. This inconvenient detail meant that, because the outbuilding had been in ancillary, rather than incidental use, for over 10 years in contravention of the original planning condition, the outbuilding had a completely lawful use as ancillary residential accommodation to the host dwelling.
- 3.14 When a planning consultant was instructed to clearly set out the reasons why the inconvenient detail of the lawful use should be properly considered as an inherent material consideration during the application process, a response was received stating that the consideration of this issue as a material consideration '*would result in a materially different planning application which was not appropriate in terms of procedure.*' (See the correspondence between the appellant's planning consultant and the relevant officers in Appendix 2 of the appeal statement). It was advised that a separate 'relief of condition' application or 'lawful development certificate' be submitted instead.
- 3.15 However, it is considered that, at this point, the LPA should have confirmed that the professional assessment of the application would need to materially change in its intended direction, leading to a planning permission rather than a refusal.
- 3.16 It is clear that the LPA's initial assessment was being challenged, and rather than take a few extra days to wait for the confirmation of the 10+years use, which had already been confirmed in writing by a professional planning consultant, the LPA rushed out a refusal of planning permission.
- 3.17 Not only did the LPA rush out a refusal of planning permission but they contacted their enforcement section to carry out an investigation of the use of the outbuilding.
- 3.18 At this point, the 2011 sales particulars were sent to the LPA which demonstrated that the outbuilding was sold with existing ancillary usage of the outbuilding. This was accepted immediately by the enforcement officer as evidence of the lawful use.
- 3.19 It is considered that if the planning officers had been as considerate and professional as their enforcement officer, this appeal would not have been required. A more helpful approach would have negated the reasons for this unnecessary appeal.
- 3.20 The request for a relief of condition application or lawful development certificate application was both unnecessary and unreasonable, and ultimately corrupted the assessment, leading to the application refusal.

- 3.21 It is perfectly reasonable and more appropriate to consider a use that has obviously become lawful over time, as part of professional planning reasoning during the course of an application, rather than request a further planning application for an unnecessary relief of condition and or lawful development certificate.
- 3.22 There is nothing, in law, or practice to suggest that a separate application is needed to release a building from an original (unreasonable) restriction or to prove 10+ years usage. This should have been a fundamental element of the planning officer's assessment.
- 3.23 The conscious refusal to take the lawful use of the existing building into account undermined and incorrectly influenced the planning officer's reasoning which ultimately led to an inappropriate refusal of planning permission.
- 3.24 If the planning officer had accepted the existing building as an existing ancillary residential building and properly understood how it was currently used and the reasons why the building could not 'double up' as accommodation for the applicant's elderly mother, then the extension to this building would not have appeared, in the mind of the planning officer and her managers, as such an apparent jump from a garage outbuilding to what the LPA considers to be a 4-bedroomed 'independent dwelling'.
- 3.25 This lack of consideration of the detail of the existing and proposed use is unreasonable.
- 3.26 It would have taken just a short discussion and a day or two extra to produce the evidence required to demonstrate that the existing outbuilding had been in ancillary usage for over 10 years (the planning officer was informed that it would be sent to the LPA asap, if required). It would have necessitated just a short discussion to help the LPA understand why that information was so important. It would have taken just a short conversation to help the LPA understand why a whole further application to prove the current usage of the outbuilding was not warranted.
- 3.27 It is contended by the appellant that the reason for target dates is to give applicants some certainty as to when decisions will be made. Target dates therefore exist for applicants, rather than for LPAs. However, an applicant would always prefer the LPA take a little longer to assess an application if it means that an expected refusal of planning permission can legitimately become a grant of planning permission. With this application, it became apparent that a further extension of time was considered unacceptable by the LPA for internal procedural reasons, rather than any valid planning reason, or to assist the applicant who remains in dire need of this extension for elder care reasons.
- 3.28 A planning condition could easily have been applied to a permission to prevent the separation of the planning unit but this was not considered.
- 3.29 The LPA therefore are considered to have prevented and, importantly, unnecessarily delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The concern about separation of the planning unit could also have been easily dealt with by way of a planning condition, and a more helpful approach, generally, would have negated the reasons for this appeal.
- 3.30 This behaviour is considered 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.