

Town and Country Planning Act 1990

Costs Appeal by Wessex Planning on behalf of
Mr Alistair Potts

Cricketwood, Tanhouse Lane, Botley, Southampton, SO30 2SZ

Planning Inspectorate Ref: APP/W1715/D/25/3366527

Local Planning Authority Ref: H/25/98737

COSTS REBUTTAL
On behalf of Eastleigh Borough Council

June 2025

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 Wessex Planning Ltd, dated 27 May 2025.
- 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 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.
- 2.2 Claim 1: The LPA failed to recognise the lawful ancillary use of the building and misapplied planning history and conditions

The appellant contends that the LPA incorrectly treated the proposal as a new independent dwelling, rather than a lawful annexe, and inappropriately relied on outdated conditions from a 2004 permission that restricted use to incidental purposes.

However, at the time of the application's determination, the LPA had not received any lawful development certificate or formal legal confirmation that the use of the building had changed or become lawful through the passage of time. In the absence of this, the LPA was obliged to assess the application in accordance with the planning status established by previous permissions, notably the 2004 approval which expressly restricted residential use.

While the appellant provided email correspondence from the Enforcement Officer stating that the outbuilding may be immune from enforcement, this was dated after the LPA had determined the application. Furthermore, informal enforcement opinions do not amount to lawful planning consent, nor can they retrospectively alter the basis on which a planning application is assessed.

The LPA was entitled to give little weight to unsubstantiated claims of lawful use and to rely on the formal planning history in its decision-making. This does not constitute unreasonable behaviour.

- 2.3 Claim 2: The LPA acted unreasonably in requesting a lawful development certificate or variation/removal of conditions

The appellant argues that the LPA was wrong to suggest that a lawful development certificate or separate application to vary conditions was required to establish the use, and that the use should have been considered on its own planning merits.

However, the LPA considers that this advice was both reasonable and appropriate. A certificate of lawfulness is the recognised legal route to establish that a use has occurred for a sufficient period to be immune from enforcement. Without such a certificate, the LPA cannot lawfully assume the use exists in planning terms.

The burden of proof rests with the applicant to demonstrate the lawfulness of any use. There is no obligation on the LPA to treat an unauthorised use as lawful where no evidence has been submitted to support that claim. The Council's approach was consistent with standard planning procedure and national guidance.

2.4 Claim 3: The LPA failed to give weight to relevant evidence and material considerations

The appellant claims that the LPA disregarded information indicating the building had been used ancillary to the main dwelling for over 10 years and thereby failed to consider a relevant material consideration.

However, no formal, verifiable evidence was submitted to demonstrate continuous ancillary residential use for the relevant period. At no point during the application process did the applicant provide council tax records, or other documentation that would typically accompany a lawful use claim.

The officer report clearly sets out the planning history and provides a full and fair assessment of the proposal. The appellant's frustration with the conclusion does not indicate procedural fault or unreasonable conduct.

2.5 Claim 4: The LPA refused an application which could have been approved with conditions

The appellant states that the perceived harm identified by the LPA could have been addressed by a condition tying the use of the building to the main dwelling.

The LPA disagrees. The scale, self-contained nature, and internal layout of the proposal (comprising four bedrooms, a separate kitchen and bathroom) clearly indicated a high level of independence. As such, the proposal was considered tantamount to a new independent residential unit.

Conditions must be necessary, enforceable, precise, relevant, and reasonable in all other respects. In this case, any condition attempting to restrict the use would not have been enforceable or effective in addressing the harm arising from the nature of the proposal.

Furthermore, the development was considered to conflict with policies designed to protect the countryside from unsustainable residential development. Conditions cannot be used to make fundamentally unacceptable development acceptable. The refusal was therefore necessary and appropriate.

2.6 Claim 5: The LPA failed to extend time or engage constructively

The appellant alleges that the LPA failed to allow time for additional evidence to be submitted and refused to engage proactively.

In reality, the case officer maintained communication with the applicant's agent and provided advice on how the proposal could be revised to address concerns — including reducing the scale and improving its subservience to the main dwelling. The appellant declined to pursue these options.

The LPA is not obliged to extend time where it is clear that amendments would not resolve the fundamental conflict with adopted planning policy. Nor is it required to meet on site where the issues can be clearly understood from submitted drawings and site photographs.

The LPA's actions were consistent with its duty to determine applications in a timely manner. Refusing to extend time where no clear benefit would arise is not unreasonable behaviour.

3.0 Conclusion

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.