

Mr Joe Dorrington
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 Removal of Condition 9 (removal of temporary access within 12 months) of Planning Approval H/24/98601 for side and rear extensions and raising of roof to provide first floor accommodation along with temporary changes to existing ground levels at Derry Dacy, Peewit Hill, Bursledon, Southampton, SO31 8BL.

Eastleigh Borough Council application reference X/25/99320

21 July 2025

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1 Introduction

- 1.1 This Award of Costs Statement has been prepared on behalf of the Appellant Mr Joe Dorrington in relation to the decision of Eastleigh Borough Council (the 'Council' or the 'LPA') to refuse planning permission for application X/25/99320 in relation to the Removal of Condition 9 (removal of temporary access within 12 months) of Planning Approval H/24/98601 for side and rear extensions and raising of roof to provide first floor accommodation along with temporary changes to existing ground levels at Derry Dacy, Peewit Hill, Bursledon, Southampton, SO31 8BL.
- 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 application for the removal of an unreasonable condition and an unnecessary appeal against the LPA's refusal to remove this condition. This costs application is made as a direct result of the Councils unreasonable behaviour during the determination of the planning applications which has led to this appeal.
- 1.3 This costs application should be read alongside our full Appeal statement, and in conjunction with the other supporting information submitted as part of the planning application.
- 1.4 The planning application was made valid by the Council on 2nd May 2025. It was allocated reference number X/25/99320. The application was determined by under delegated authority. The decision notice dated 27th June 2025 cited one reason for refusal:
- The removal of Condition 9, which requires the removal of the temporary construction access and reinstatement of the land in accordance with the approved landscaping plan, would result in the permanent retention of an additional access point on a site located outside the urban edge and a settlement gap. The access is not necessary to serve the approved development, and its retention*

would contribute to the urbanisation and potential subdivision of the site, undermining the rural character and landscape integrity of the area. As such, this is contrary to Policies S5, S6, 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).

- 1.5 The original condition was not recommended by the planning officer in her report to committee (Appendix 3), but was imposed by the Planning Committee members, as evidenced by the printed minutes (Appendix 1).

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. 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

2.5 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

unreasonable behaviour of the LPA has resulted in the appellants incurring significant unnecessary financial costs in challenging the refusal of planning permission.

- 3.3 In this case the Appellant considers that the Local Planning Authority has acted unreasonably substantively, for the following reasons:

Imposing an unnecessary condition that is unnecessary, imprecise and unreasonable

- 3.4 Due to the imposition of the landscaping condition (Condition 5 of the original permission), which requires a landscaping plan across the whole site, it is considered that the condition to completely remove the existing access is unnecessary.
- 3.5 The planning committee ‘leapfrogged’ what should have been a future unbiased assessment of an application to discharge this landscaping condition, making an assumption that this access could never be made to appear appropriate within its setting and fettering the LPA’s future position on the landscaping plans.
- 3.6 In fact, the intention was always to reduce the size of the hardstanding to under 5 square metres and plant shrubs and trees around the point of access to soften its appearance. As such, it is not considered that the access would even require planning permission in these circumstances.
- 3.7 As the possibility to use permitted development for a new hardstanding constructed under Schedule 2, Part 1, Class F and accessed under Schedule 2, Part 2, Class B still exists for Derry Dacy, this is a genuine fall-back position, which was not considered by the LPA due to its misunderstanding of the application of the GPDO. There are no limits on the number of accesses that can be constructed using this permitted development.
- 3.8 To summarise on this point, the decision notice for the original permission included a condition that provided the LPA with the

control over the visual impact of this access making the condition unnecessary.

- 3.9 Additionally, the access was always envisaged as a permanent, rather than a temporary access. The LPA therefore made an unevidenced assumption that the access was temporary, which was not only imprecise, but erroneous. The fact that the access did not appear on any submitted proposed plans was also ignored by the planning committee who took the opportunistic approach to impose a condition which unreasonably produced a complete and total prohibition, without exception, on the retention of this secondary access.
- 3.10 For the above reasons, and those set out in the Statement of Case, the condition imposed is unreasonable, as is the Council’s reasons for refusing to remove the condition.
- 3.11 Furthermore, the LPA have sought to unreasonably progress their argument in refusing to remove this condition which has both revealed and introduced other reasons for the retention of the condition that were not originally expressed. The formal reason for the condition is stated as “*in the interests of the visual amenity of the locality*”. There is no indication whatsoever within the original officer report that the condition was imposed for the three newly introduced reasons.
- 1 That the secondary access is ‘not necessary to serve the approved development’.
 - 2 That the secondary access ‘would contribute to the urbanisation and potential subdivision of the site’.
 - 3 That the secondary access ‘would undermine the rural character and landscape integrity of the area’.
- 3.12 Each of these reasons have been rebutted in the Statement of Case.

- 3.13 However, the condition was imposed by Members, rather than officers, and so it is difficult to understand how officers have lawfully introduced these three additional reasons for imposition of the condition without specific Member direction.
- 3.14 The application to remove this condition was not brought to committee and the officer did not recommend that this condition should be imposed on the original application. Any further reasoning used to defend this appeal should properly have concentrated only on the visual amenity reason rather than introduce new reasons.
- 3.15 Additionally, any new reasons used for defending the refusal of the LPA to remove this condition should, more properly, have come from the Members of the planning committee who imposed this condition and its reason in the first instance.
- 3.16 It is important for the general public to have confidence that decisions taken by elected representatives are properly taken, and that officers properly reflect those decisions. There is no record or any evidence that the planning committee members who imposed the original condition, imposed it for the reasons used in the reason for refusal of the application to remove the condition.
- 3.17 These three reasons must have come from somewhere, but they are not recorded in any minutes. In this regard, the Inspector is requested to take particular note of the entirety of the printed minutes attached as Appendix 2 to this costs application statement.
- 3.18 These minutes demonstrate that it was committee members that attached Condition 9 to the original application. They also demonstrate that there is no record of any presentation, debate or discussion as to the legality of the proposed condition in terms of the '6 tests' or any discussion of the three reasons now used to defend the LPA's refusal to remove this unreasonable condition.

- 3.19 A costs award would act as a future incentive for both planning committee members and officers to ensure that the 'six tests' for lawful condition are thoroughly discussed, particularly when Members seek to impose a condition not recommended by officers. This would avoid the unnecessary time and cost spent by applicants seeking, firstly, the removal of conditions that fail one or more of the 'six tests' and secondly, pursuing an appeal against the LPA's refusal to remove such conditions.
- 3.20 This behaviour has been unreasonable resulting in unnecessary costs and delay to the appellants.

4 Conclusion

- 4.1 The behaviour of the LPA in imposing the condition on the original permission is considered unreasonable, necessitating an unnecessary application for its removal. The refusal to remove this condition only compounds this unreasonable behaviour, and has resulted in this appeal.
- 4.2 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 the planning application for the removal of the unreasonable condition;
 - Appointing a Planning Consultant to prepare this appeal and Statement of Case to rebut the LPA's refusal to remove this unreasonable condition;
 - Appointing a Planning Consultant to prepare this Costs Application;
- 4.3 It is acknowledged that it is unusual to seek costs for the application to remove the unreasonable condition in addition to the appeal against the refusal to remove the unreasonable condition. However,

if the unreasonable condition had not been imposed by Members at the outset and/or officers had properly advised Members with regard to the '6 tests', neither the refused application that sought the removal of the condition, nor this subsequent appeal would have been necessary.

- 4.4 Without a full costs award for both the application and the appeal, there is little incentive for Planning Committee Members to more carefully consider imposing additional planning conditions on planning applications presented to them, or for officers to ensure that Members are properly advised and the ensuing discussions fully recorded.
- 4.5 Having regard to the issues discussed in this Statement of Case, it is respectfully requested that full costs are awarded to the Appellant.

5 List of Appendices (submitted with Appeal Statement)

Appendix 1 - Printed minutes of Planning Committee

Appendix 3 - Original Officer Report