

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 10 (permitted development rights) 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/25/99319

15 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/25/99319 in relation to the Removal of Condition 10 (permitted development rights) 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 provides 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 Council's 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 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/25/99319. The application was determined by under delegated authority. The decision notice dated 27th June 2025 cited one reason for refusal:

The removal of Condition 10, which removes permitted development rights for additional extensions, outbuildings, dormer windows, and roof alterations, would allow further development to take place on a site that is located outside the urban edge and within a settlement gap. Given the scale of built form already present, the site's sensitive location, and its planning history, the removal of this condition would result in the potential for cumulative and uncontrolled additions that would be harmful to the rural character, appearance, and openness

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).

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 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:-

Vague Assertions about a proposal's impact unsupported by any objective analysis

- 3.4 The LPA's reasons for imposing the condition to remove permitted development rights appear to revolve around the site's 'unique sensitivities.' However, it is clear that there is nothing 'unique' about the appeal site. There are many dwellings within large plots within the Hedge End/Bursledon settlement gap, all of which have full permitted development rights to allow reasonable modernisation and expansion, including the provision of outbuildings.
- 3.5 The LPA have not taken the decision to use an Article 4 direction in this area to remove permitted development rights in the wider area, and therefore it can be reasonably assumed that their decision relates only to the appeal site. This is important because the inference is that the LPA consider that the use of permitted development rights to be acceptable on all other sites within the settlement gap, which covers a wide area.
- 3.6 The LPA's reliance on the vague assertion that this site has 'unique sensitivities' has not been articulated in any justifiable or substantive manner, most likely because there is nothing that is 'unique' about this site. There is nothing that elevates this site above the norm or readily distinguishes it from any other site within the Gap. If this site were to be considered 'unique' then this would surely apply to every dwelling within the Settlement Gap, which is nonsensical.
- 3.7 The GPDO exists to strike a balance between uncontrolled development and reasonable householder rights. It is self-limiting due to specific criteria and thresholds which are embedded into the legislation. If development exceeds these thresholds then a full planning application is required. It also self-limits its use to areas outside of agreed sensitive areas such as National Parks, National Landscapes and Conservation Areas.

- 3.8 Understandably then, it is unsurprising that the NPPF requires clear justification for any removal of these reasonable rights for householders.
- 3.9 This clear justification has not been given. The material planning harm has not been explained excepting a vague and general assertion that the use of the remaining rights 'might' reintroduce some elements of a previously refused scheme, and may include outbuildings, the harm from which has not been identified.
- 3.10 Indeed, the officer reports confirm that the extensions to the existing dwelling would cause minimal harm due to the positioning, location and landscape screening of the dwelling.
- 3.11 Therefore, the LPA's argument that the use of any remaining permitted development allowances (designed to be reasonably executable in the majority of circumstances) would cause material planning harm is without foundation.
- 3.12 The use of the remaining permitted development rights would not result in, for instance, any injury to neighbour amenity, any harm to trees, any maiming of habitat, any marring of visual amenity, nor any material narrowing of the settlement gap or injury to its purposes.
- 3.13 In fact there has been no objective analysis of material planning harm that has taken place, at all.

Not determining similar cases in a consistent manner

- 3.14 Three examples have been provided to the Inspector, demonstrating that the LPA has allowed similar or even larger extensions on large plots within the settlement gap without removing permitted development rights.

- 3.15 It is the appellant's contention that none of these residential plots are any more unique than others situated within the Hedge End/Bursledon settlement gap.
- 3.16 The Inspector is invited to view these properties from the nearest public vantage point.
- 3.17 It is considered important that the users of the planning system have confidence that applications are assessed in a consistent manner. The application of the condition removing permitted development rights on this dwelling demonstrates a clear and worrying lack of consistency.

Imposing an unnecessary condition that is unnecessary, imprecise and unreasonable

- 3.18 Notwithstanding that the officer report concedes that the planning condition is imprecise in that it includes for the removal of a permitted development right that could not be used in any case, the condition is also considered both unnecessary and unreasonable.
- 3.19 The reason given for the condition is "To protect the amenities of the locality and to maintain a good quality environment."
- 3.20 However, as has been demonstrated, there are no amenities that would not be protected as a result of the implementation of permitted development rights for the dwelling. Likewise the environment would remain of 'good quality' should permitted development rights be implemented. This is as a result of the embedded checks and balances within the various relevant sections of the GPDO.
- 3.21 The condition is therefore unnecessary.
- 3.22 The condition is also considered unreasonable as it removes the freedom to carry out small scale domestic additions and alterations in a situation that is not 'unique' by any reasonable measure.

- 3.23 Additionally, the inconsistency demonstrated by the LPA in applying this condition to this site, where it has not done so on other sites makes the condition unreasonable.
- 3.24 As such the refusal to reinstate permitted development rights does not comply with the guidance in the National Planning Policy Framework.
- 3.25 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.