



## Costs Decision

Inquiry held on 1 to 4 and 8 to 9 November 2022

Site visit made on 13 December 2022

**by Darren Hendley BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20<sup>th</sup> December 2022

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### **Costs application in relation to Appeal Ref: APP/W1715/W/22/3292580 Land at Satchell Lane, Hamble-Le-Rice**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Steve Carrington, FHL Planning for a partial award of costs against Eastleigh Borough Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for what is described as a planning application for residential development of 61 no. dwellings, with associated public open space, landscaping and amenity areas with access off Satchell Lane.
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### **Decision**

1. The application for an award of costs is partially allowed in the terms set out below.

### **Procedural Matter**

2. The applicant's claim for costs was made in writing during the Inquiry. The Council's response was also made in writing during the Inquiry, as was the applicant's reply. There were no subsequent oral additions to the claim.

### **Reasons**

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The claim concerns the substance of the case that the Council put forward in relation to reasons for refusal 2 (accessibility) and 3 (congestion).

### ***Reason for Refusal 2***

5. The applicant considers that the Council has acted unreasonably because it has run the same point that was dismissed by the Inspector in allowing a previous appeal<sup>1</sup> on the site for residential development and that was subsequently the subject of a legal challenge<sup>2</sup> which proved unsuccessful.

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<sup>1</sup> Appeal Ref: APP/W1715/W/18/3194846 Land at Satchell Lane, Hamble-le-Rice SO31 4HP

<sup>2</sup> Eastleigh Borough Council v Secretary of State for Housing Communities and Local Government, Mr Robert Janaway and Mr Simon Bull [2019] EWHC 1862 (Admin)

6. The applicant has drawn attention to where the PPG refers to the types of behaviour that may give rise to a substantive award against a local planning authority. These relate to acting contrary to, or not following, well-established case law; and 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. The applicant considers that to persist on the matters set out in reason for refusal 2 is unreasonable behaviour because there has been no change in circumstances on the grounds or in policy since the previous appeal or legal challenge.
7. The Council clearly still disagrees with the previous Inspector's conclusions on this issue and has highlighted that the legal challenge proceedings concern a point of law, not the merits of the decision itself. It considers that an appeal decision is not bound by the judgment of a previous Inspector, provided there are good reasons for disagreement.
8. It seems to me this also applies to the Council in justifying its continued opposition on the issue. To consider that no change in circumstances need to be demonstrated contradicts the guidance in the PPG on costs in relation to the types of behaviour which I have set out above, even if in certain circumstances this may be done through a planning judgement.
9. Hence, the salient point as regards costs is whether there has been a change in circumstances that would justify the Council's continued objection on accessibility grounds. This has to be more than disagreeing with the previous Inspector, in particular as the legal challenge was unsuccessful.
10. The Council has pointed to factors that were not before that Inspector. These include the Fareham appeal decision<sup>3</sup>, where that Inspector found against that appellant on accessibility grounds. The Examining Inspector for the Council's Local Plan<sup>4</sup> also did not include part of the Mercury Marina site for residential use, which is also along this stretch of Satchell Lane. Both these are more recent than the previous appeal decision. While I disagree with the Council on these points as a planning judgement, these are changes in circumstances where a view could reasonably be taken to the contrary.
11. However, the Council has also clearly relied on arguments that were before the previous Inspector. Matters in relation to the usage of the same walking routes by schoolchildren and other vulnerable groups were considered by that Inspector and said to be acceptable, as was the issue of 'policy requirement' and the risk of using an unsafe route. There has not been a change in circumstances on these matters, based on the evidence that was presented. This amounts to unreasonable behaviour.
12. For costs to be awarded, there also needs to have been unnecessary or wasted expense in the appeal process. The applicant would still have to have prepared evidence on this matter in relation to the points where I have indicated there was what could be reasonably considered to be a change in circumstances. Nevertheless, some residual expense would have occurred in dealing with points that had already been considered to be acceptable by the previous Inspector, and this is where that part of the costs claim is successful.

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<sup>3</sup> Appeal ref: APP/A1720/W/22/3297544 Land east of North Wallington Road, Wallington, Fareham PO16 8TE

<sup>4</sup> Eastleigh Borough Local Plan (2016–2036) (2022)

### **Reason for Refusal 3**

13. The applicant also considers that the Council has acted unreasonably over the issue of whether there has been a change in circumstances by way of congestion since the previous appeal. The applicant points to where the PPG refers on substantive grounds to a failure to produce evidence to substantiate each reason for refusal on appeal and not determining similar cases in a consistent manner.
14. It was common ground that there were no changes to the highway network since the previous appeal. However, this has led to at least some of the Council's concerns because the Hamble Lane Improvement Scheme has not been delivered and there is uncertainty over whether these improvements will be made, as was set out in evidence. Hence, there is some justification in the Council taking a different position from that which it presented during the previous appeal. The County Council's Position Statement is no more than part of the background evidence following the lack of progress on the improvements and which the GE Aviation appeal decision<sup>5</sup> also points to. This lack of progress is a change in circumstances, compared to what was foreseen during the previous appeal.
15. The applicant considers the Council's reading of paragraph 111 of the National Planning Policy Framework was contrary to its wording. Yet, there is no definition of what severe means, nor explicitly of whether the impact concerns solely the proposal or also the baseline conditions, as I have set out in my appeal decision. As a consequence, there is ample room for different readings of that paragraph to be made. Interpretation of policy is itself a matter for the courts.
16. The applicant also points to that the Council did not present its own modelling evidence. This ultimately did not aid the Council's case, but there was agreement in any event that Hamble Lane and the associated junctions are congested, as I heard in evidence.
17. Accordingly, I do not agree that there has been a failure by the Council to produce evidence to substantiate this reason for refusal and that it has not determined similar cases in a consistent manner. The Council has not therefore acted unreasonably on this part of the claim and so I do not have cause to consider in this regard whether unnecessary or wasted expense has resulted.

### **Conclusion**

18. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in so far as reason for refusal 2 only and specifically where the Council has persisted in objections which the previous Inspector had indicated to be acceptable. An award of partial costs is therefore justified.

### **Costs Order**

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that

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<sup>5</sup> Appeal Ref: APP/W1715/W/20/3255559 GE Aviation, Kings Avenue, Hamble-le-Rice SO31 4NF

Eastleigh Borough Council shall pay to Steve Carrington, FHL Planning, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in reason for refusal 2 to the extent set out in this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

20. The applicant is now invited to submit to Eastleigh Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Darren Hendley*

INSPECTOR