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## Costs Decision

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22.05.2024

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### **Costs application in relation to Appeal Ref: APP/W1715/D/23/3335724 32 Bradshaw Close, Fair Oak, Eastleigh, SO50 7BS**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr S Cole for an award of costs against the decision of Eastleigh Borough Council.
  - The appeal was made against the refusal of an application, Ref H/23/94919, which sought planning permission for a replacement patio and fencing, new boundary fence facing Mortimers Lane.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Planning Practice Guidance (guidance) advises that, irrespective of the outcome of the appeal, costs may only 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.
  3. The Appellant argues that the Council has acted unreasonably by pursuing their request for a planning application for the retention of the patio despite having confirmed in writing on two separate occasions that planning permission was not required. The thrust of the two letters is set out by the Appellant who continues to make the case that planning permission is not needed. There were pre-appeal attempts to have dialogue with the Council and case law in terms of the Class of development was cited but has seemingly been ignored by the Council.
  4. The other main concern of the Appellant is that Committee Members, without a site visit, overturned the officer's recommendation for permission to be approved. This was despite a strong and detailed report confirming the acceptability of the scheme. The report noted that the patio would not be out of character or excessive in scale and that neighbours' amenities would not be adversely affected. Notwithstanding this advice, and detailed measurements, Members refused the application. The Appellant feels this was centred around perceived notions rather than the facts before them and a site visit should certainly have arisen.
  5. For its part the Council underlines that Planning regulations, particularly those concerning Permitted Development Rights, can be complex and often require detailed assessment; in this case multiple site visits were conducted. The final finding, albeit after seemingly incorrect initial responses, was that as some of
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the raised patio exceeded 30cm above the ground it could not be classified as permitted development. The Council explains that open and frequent communication was underway with the Appellant and it was explained that the road side fencing needed planning permission in any event.

6. In terms of the Committee, Planning Officers only advise and assist Members in decision-making. They are not obligated to agree with the Officer's recommendations. They have the authority to exercise independent judgment in reaching decisions. Whilst not visiting the site, Members had factual evidence presented and a visual presentation including annotated photographs. A written statement from the neighbour was read out and Councillors asked questions of the Planning Officer and debated the merits of the application proposals. It is put that the ultimate decision was based on sound planning grounds and Local Plan policy.
7. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, a partial, award of costs.
8. I recognise that an appeal process can be time and fee consuming and that professional assistance comes at a cost. The Council does appear to have been open in communication. It was regrettable that opinion on the matter of the complex framework of permitted development did vary over time and one can sense the frustration that would cause. However, without full history and on-site detail, from the over-arching perspective it would ultimately appear that a planning application was the correct approach and the Appellant took that line. On receiving this and after processing it I would say that the Council then gave fair reasons for the judgement it reached. I am conscious that residential amenity will always have a degree of subjectivity. I am satisfied that this scheme was judged on its own merits after factual presentation and debate and I am not persuaded that there was a casualness in approach or that a site visit here was essential. Obviously, the Members did not follow the advice of the Officers. Nevertheless, to my mind the refusal reasons are clear and set out unequivocally the concerns of the Council and cross-refer to applicable policy.
9. As it happens, I do not agree with the conclusion reached by the Council on the scheme. However, I would nevertheless defend its wording and assertions in the round as not being unsubstantiated and its actions throughout the process as not being irrational.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

*D Cramond*

INSPECTOR