Planning Inspectorate

Costs Decision

Site visit made on 10 July 2025

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/W1715/D/25/3366527
Cricketwood, Tanhouse Lane, Botley, Hampshire SO30 2SZ.

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr A. Potts for a full award of costs against Eastleigh Borough Council.
- The appeal was against the refusal of planning permission for extension to existing outbuilding to provide annex facilities.

Decision

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

Reasons

2. The Planning Practice Guidance 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.

3. The appellant contends that the local planning authority prevented and unnecessarily delayed development which, in his opinion should clearly have been permitted, having regard to the development plan, national policy and other material considerations. The reasons for the appellant's contentions are:

   - Firstly, the Authority did not properly assess the continued need for conditions 3 and 4 attached to the original planning permission (Ref: F/04/50879). In that it failed to take into account the lifting of the agricultural tie on the main house in 2017 or the appellant's claimed use of the building for ancillary residential purposes for some 10 or more years;

   - Secondly, the Authority's request for separate applications for the removal/variation of conditions 3 and 4 and a Lawful Development Certificate in respect of the use of the building as ancillary residential accommodation was both unnecessary and unreasonable;

   - Thirdly, the Authority were not willing to accept the Council's Enforcement Officer's informal opinion that the use of the outbuilding as ancillary accommodation may be immune from enforcement when determining the planning application; and,

   - Finally, the appellant asserts that had a planning condition been adopted to prevent the separation of the ancillary property from the existing planning unit the proposal could have been approved.

4. The original planning permission, Ref: F/04/50879 for the garage with roof space storage, ancillary to the main dwelling was conditioned. Conditions 3 and 4 explicitly restricted the building's use to purposes incidental to the enjoyment of the dwelling houses, prohibiting conversion to living accommodation or use for business, commercial, or industrial purposes without prior written consent from the Authority.

5. The application, the subject of the appeal was described as an extension to the existing outbuilding to provide annex facilities. It did not seek to remove or alter the conditions attached to the original permission, for which there are well established planning procedures. Accordingly, I do not consider that it was unreasonable for the Authority to require a separate planning application to remove or vary the conditions attached to planning application F/04/50879.

6. A Certificate of Lawfulness is the appropriate legal route to establish the use. The burden of proof resting with the appellant to demonstrate the lawfulness of any claimed use. While I note the Enforcement Officer's informal opinion that the current use may be immune from enforcement, this does amount to conclusive determination on this matter. Due to the lack of evidence submitted to support the appellant's claim I consider that the Council's approach to this matter was consistent with standard planning procedure and national guidance and therefore not unreasonable.

7. Turning to the final issue I found that due to the level of accommodation provided the development would result in the creation of an independent dwelling unit. Further, I concluded that the development would cause harm to the character and appearance of the countryside. A condition would not have addressed the harm identified.

8. In conclusion, I cannot agree that the Authority has acted unreasonably in any aspect of this case. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For the reasons set out above and having regard to all other matters raised, neither a full nor partial award of costs is justified.

Philip Willmer

INSPECTOR