Cost Award Application

Enforcement Appeal Reference: APP/M1710/C/24/3349196
LPA: Havant Borough Council
Agent: Mr Raymond Saunders
Appellant: Mr Benjaman Bassett
Site Address: 59 Hazleton Way, Waterlooville, PO8 9BP

Local Planning Authorities are required by legislation to determine planning applications against local plan policies which have been adopted that are consistent with National Policy and Guidance.
Cost awards in planning appeals are considered to be a tool to encourage both the planning authorities and applicants to focus on the aspects of 'reasonableness' in determining planning applications and making an appeal against a decision to refuse planning consent or impose unnecessary conditions.

The aim of the cost regime is to:

1. Encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
2. Encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.
3. Seek to increase the discipline of parties when taking action within the planning system, through financial consequences for those parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process**. A party may be ordered to meet the costs of another party, wholly or in part, on specific application by the aggrieved party.**
4. Discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.

Full award.
A full award of costs relates to the applicant's whole costs of the statutory process, including the submissions of the appeal statement and supporting documents. It also includes the expense of making the costs application in respect of the appeal process, whether in writing or at a hearing or inquiry.

Costs may be awarded where...

1. A party has behaved unreasonably; and
2. The unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

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.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible.

It is an established practice that parties will be responsible for their own costs in relation to making or defending an appeal. However, all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceedings, behaviour and actions can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

Substantive: Relating to the issues arising from the merits of the appeal:

The LPA have an obligation to discharge their Development Management Responsibilities with regards to the adopted and saved policies within the Local Plan, Supporting Supplementary Policies, the NPPF and Planning Practice Guides.

The LPA have a statutory duty to carryout investigations into alleged breaches of planning control. The NPPF states...

> *Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.*

The LPA should not take enforcement action that causes any injustice to a party to the proceedings relating to the alleged breach of planning control or any appeal that may follow the investigation. This is particularly relevant to behaviour that causes wasted or unnecessary expense throughout the planning process.

Unnecessary or wasted expense

An application for costs will need to demonstrate clearly how any alleged behaviour has resulted in unnecessary or wasted expense and decisions will be taken on the balance of probability. Expense should be identifiable or capable of being quantified in some tangible way. Expense may be unnecessary or wasted because the entire appeal could have been avoided

The power to award costs enables a party to be awarded the costs necessarily and reasonably incurred in the appeal process. The costs of the appeal will typically - for an appellant - be those of employing an agent to submit the appeal and represent them throughout the process.

Meaning of "Unreasonable"

The word unreasonable is used in its ordinary meaning as established by the Courts in Manchester City Council v SSE & Mercury Communications Limited [1998] JPL 774. The most common examples concern non-compliance with procedural requirements or failure by the planning authority to substantiate a stated reason for refusal of a planning permission.

Where a party has indicated an intention to apply for costs and has clearly set out the basis for the claim, their case will be strengthened if the opposing party is unable to explain why the relevant facts or matters referred to have not led to a change of stance or position.

Suggestions for good practice – minimising the risk of a cost award.

While the costs regime is a necessary disciplining tool, an award of costs is plainly not a satisfactory outcome in terms of the overall use of resources. Good behaviour includes careful and on-going case management. Parties can minimise the likelihood of costs being awarded against them, or the extent of any award, by following the good practice listed below:

- *There should be constructive co-operation and dialog between the parties at all stages.*

- *Parties should maintain good records and an audit trail of negotiations, dialog and information exchanges between them.*

- *Planning authorities should consider using informatives on decision notices and other documents as an aid to improving communications between all parties and promoting reasonable conduct in the planning system.*

- *Parties should actively review their cases, respond promptly to changing circumstances and provide a clear explanation of a revised stance or position, with nothing coming as a complete surprise throughout the process, and...*

- *Parties should be willing to accept the possibility that a view taken in the past can no longer be supported and act accordingly at the earliest opportunity, even at the risk of an application for costs being made where, for example, an appeal or reason for refusal of planning permission is withdrawn at an early stage.*

With regards to enforcement action, planning authorities must carry out adequate prior investigations consistent with national policy and guidance. They are at risk of an award of costs if it is considered that an appeal could have been avoided by more diligent investigation.

Planning authorities will be expected to produce evidence at appeal stage to substantiate each reason for refusal with reference to the development plan and all other material considerations. If they cannot do so, they risk a cost award against them for any unsubstantiated reason for refusal. This continues to be the ground on which costs are most commonly applied for and awarded against a planning authority.

The key test will be whether evidence is produced on appeal which provides a respectable basis for the authority's stance, in the light of R v SSE ex parte North Norfolk DC 1994 [2 PLR78].

Grounds for the cost award application against the LPA.

The initial enforcement investigation was raised after receiving a single complaint in June 2023 from a member of the public that....

'a large wooden structure had been erected in the front garden of 59 Hazleton Way. Concerns were expressed that it looks very unsightly and too big for a front garden'.

The Council entered into correspondence with the owner who replied to their initial enquiry promptly saying they thought the structure was covered under permitted development rights as they were copying the one just down the road that was much larger and within their front garden. The Council replied confirming the structure was not covered under permitted development rights due to its location forward of the principal elevation of the dwelling.

The owner was requested to provide the LPA with photographs and measurements of the structure and what it was used for. The requested information was provided to the LPA. Having concluded that the structure required planning permission the Council suggested that the property owner should remove the structure altogether, move it to the rear of the property, or make a retrospective planning application to regularise the alleged breach of planning control.

The owner readily accepted that it was necessary to regularise the planning position possibly by submitting a retrospective planning application in line with the Council's suggestion. The owner was advised that they could seek pre-application advice to assess the possibility that planning permission would be recommended by the planning officers.

The owner decided to take that option and in August 2023 paid a fee of £63.00 for pre-application advice to assess the outcome if a retrospective planning application was submitted to regularise the planning position.

The planning officers requested additional photographs in order to carry out a desk-based study of the site. The LPA state that the case officer also made a site visit. On 17th January 2024 the planning officer responded to the pre-application advice request saying....

The shed /cycle storage that was built at the front of the property is considered out of the context of the neighbourhood unfortunately. Therefore, if an application was submitted, the proposal would not receive officer's support because of the impact on the street scene, the character of the area and the position at the front of the property with no screening at front boundary, thus it is unlikely to be approved.

On receiving this planning officer's advice, the property owner was not convinced it was an accurate assessment as he had provided evidence to show that similar like for like development existed within the local area and just down the road, setting a precedence for outbuildings within a front garden. Moreover, Photographs were provided showing the existing landscaping that was already planted by way of an evergreen laurel hedge that was forward of the structure, that would in time completely cover the outbuilding alleviating any adverse effects on the street scene. After all the visual effects on the street scene was the only stated concerns raised by the LPA.

The property owner decided that he needed to be formally represented by an experienced planning adviser and instructed me to represent him as his agent. Before I was able to formally respond to the LPA due to my workload at the time, the LPA sent a letter before action to the property owner dated 2nd April 2023.

The Council's correspondence set out that the intended action was to serve an enforcement notice to remove the shed/cycle storage and offered a further opportunity for the appellant to make a retrospective planning application within 28 days. It is a material consideration that the planning officers had already advised that any planning application would be unlikely to receive officer support.

The rationale of this approach they claimed was to afford the applicant an opportunity to appeal a failed planning application as that would be the applicants right. It was abundantly clear at this stage that the LPA was content for the matter to proceed to formal appeal proceedings, regardless of the evidence.

Fortunately, at this point of the investigation I was able to advise the property owner as his agent. After a full review of the evidence available to me, I drafted an email for the appellant to send to the LPA dated 11th April 2023, in the hope and expectation that the LPA would re-evaluate the evidence and take no further action. I have provided a copy of that email for reference: **Document 1 Appendix 'A'.** The correspondence requested additional information and made the following valid points....

> ***Para 4:*** *The planning department has taken a view based on limited evidence that in our planning advisors view does not carry the weight required to initiate formal enforcement proceedings. You have confirmed that only one member of the public has complained about the alleged breach of planning control which carries very little weight that it is in the public interest to pursue formal enforcement action. Assuring you of my continued cooperation in resolving this matter. Kind regards Mr Bassett.*

The Planning Enforcement Team Leader Mr Brendon Flynn responded on 18th April 2023. I have provided a copy for reference: **Document 2 Appendix 'A'.** It states....

> *I would like to achieve an equitable solution however the development remains vulnerable to enforcement action as it does not benefit from permitted development rights. I note you sought pre-application advice.*
>
> *It remains open to you to submit a planning application and appeal the outcome if you believe the Local Planning Authority have not correctly applied their own policies.* ***If an application is not forthcoming within 28 days, I will consider the expediency of issuing an enforcement notice without further delay.***

On receiving this I felt encouraged that the LPA were open to re-evaluating the evidence as they stated they would like to achieve an equitable solution. I decided (due to the time restraint) it would be worthwhile setting out a comprehensive Statement of Case in line with a statement you would provide to support a formal planning application. The planning statement was sent to Mr Brendon Flynn on the 15th May 2023 with a covering email that I have provided for reference, **Document 3 Appendix 'A'.** Several exhibits were referred to within the statement. This evidence has been provided within the formal SOC for the appellant which should be referred to.

It is material to note that the planning statement and the supporting evidence was sent to the Planning Enforcement Team Leader at least 5 weeks prior to the consultation with the Head of Place whose report is dated 25th June 2024. The contents of the Report of the Head of Place makes no reference to the 'Planning Statement' and even worse, it doesn't even acknowledge its contents in any way.

I consider that the enforcement investigation turns at this point for the following reasons;

The planning statement and supporting evidence was provided to the LPA at significant expense to the appellant. The evidence made reference to several like for like development within the local area and down the road. Several photographs were provided. The LPA stated that one of their concerns related to precedence for inconsistent and out of character front outbuildings. I refer to **para 4.20** of the planning statement that states....

With regards to setting a precedence for inconsistent and out of character front outbuildings I have provided sufficient evidence to show that the precedence you fear has already been set within the locality of the site and down the road.

At Para 1.3 it states....
The front boundary treatment is of laurel hedging (new planting) alongside the vehicular access.

Photographs attached to the Council's Enforcement Notice at Appendix 'A' show the frontage of the site prior to the development showing the tall screening at the boundary with the neighbouring property and Appendix 'B' identify the evergreen laurel hedge in place forward of the shed and within the formal curtilage of the site.

The case officer that assessed the development at the site visit would have seen the existing landscaping and has afforded no weight to the fact that in time it will completely screen the shed from the street scene. How can a structure that will be completely screened by an evergreen hedge that has been planted for that sole purpose be described as an injury to public amenity? If you cannot see it from the public realm then the public interest is not harmed.

- *Parties should actively review their cases, respond promptly to changing circumstances and provide a clear explanation of a revised stance or position, with nothing coming as a complete surprise throughout the process.*

The appellant responded to the case officer's assessment with a comprehensive planning statement and supporting documentation and photographs. The evidence was not taken into account rendering the officer's assessment unfounded.

Whilst it was the original case officer that made the recommendation for refusal if a planning application had been made, it was the far more senior planning enforcement team leader that supported this unfounded decision after the extensive evidence had been submitted by the appellant to him directly on the 15th May 2024. Moreover, the recommendation to take formal enforcement action was in consultation with the Head of Place who was NOT aware of the additional evidence as nothing was recorded about it within the official report.

- *Parties should be willing to accept the possibility that a view taken in the past can no longer be supported and act accordingly at the earliest*

opportunity, even at the risk of an application for costs being made where, for example, an appeal or reason for refusal of planning permission is withdrawn at an early stage.

- *Planning authorities will be expected to produce evidence at appeal stage to substantiate each reason for refusal with reference to the development plan and all other material considerations. If they cannot do so, they risk a cost award against them for any unsubstantiated reason for refusal. This continues to be the ground on which costs are most commonly applied for and awarded against a planning authority.*
- *The key test will be whether evidence is produced on appeal which provides a respectable basis for the authority's stance, in the light of R v SSE ex parte North Norfolk DC 1994 [2 PLR78].*

While the costs regime is a necessary disciplining tool, an award of costs is plainly not a satisfactory outcome in terms of the overall use of resources. Good behaviour includes careful and on-going case management. Parties can minimise the likelihood of costs being awarded against them, or the extent of any award, by following the good practice set out in the practice guides.

Where a party has indicated an intention to apply for costs and has clearly set out the basis for the claim, their case will be strengthened if the opposing party is unable to explain why the relevant facts or matters referred to have not led to a change of stance or position.

The email sent to the LPA dated 11th April 2024 **Document 1 Appendix 'A'** states....

It would also be helpful if you could set out how the structure harms the policy objectives in this instance. It is the opinion of our planning advisor that the supporting evidence we have and can further provide would succeed on appeal and that the enforcement notice would have very little chance of being upheld and would be quashed. Of course, it should be stressed that a full award of costs against the LPA would be made.

The LPA were provided with the planning statement and supporting photographs and documentation on the 15th May 2024 setting out a very respectable case for the appellant which should have satisfied the LPA that it was not expedient to pursue formal enforcement action.

Planning appeals often involve matters of judgement concerning the character and appearance of a local area or the living conditions of adjoining occupiers of property. Where the outcome of an appeal turns on

an assessment of such issues it is unlikely that costs will not be awarded if realistic and specific evidence is provided about the consequences of the development.
On the other hand, vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by any objective analysis, are more likely to result in a cost award.

The LPA have made specific reference to the visual impact of the development within the street scene claiming that due to no screening at the front boundary would result in the development having an unacceptable adverse impact on the locality of the site. Landscaping by way of an evergreen laurel hedge has been in place throughout that will completely cover the structure rendering the Council's objective analysis unfounded.

The Council's inaccurate assertions about the impact on the street scene were brought to their attention via the planning statement and supporting evidence prior to the formal enforcement action being taken. The enforcement investigation should have been closed and no further action taken in line with sensible on - going case management.

Councils are aware of the risks of cost awards against them associated with poor case management resulting in unreasonable behaviour. The LPA was made aware that a cost award application would be made at appeal.

The key test will be whether evidence is produced on appeal which provides a respectable basis for the authority's stance, in the light of R v SSE ex parte North Norfolk DC 1994 [2 PLR78].

The Councils statutory powers are discretionary and Planning Practice Guides state that formal enforcement action should not be taken to regularise a technical breach or a breach of planning control that causes no harm to the locality of the site. The thrust of the Council's argument relies on adverse visual amenity from within the street scene V the appellants argument that the evergreen laurel hedge that is in place will completely cover the structure removing any adverse effects on the street scene.
Summary:

- The LPA have made unfounded assertions relating to the lack of screening at the front boundary of the site.

- Due to the planning officer's recommendation that planning permission would not be granted for the development, a planning application was not submitted. Photographic evidence confirmed that the landscaping that was in place satisfied the alleged policy conflict and a conditional consent to a formal planning application to safeguard the existing landscaping should have been the recommendation at the pre-application stage.

- A poor initial assessment by the 'development team planning officer' was not accepted by the enforcement team leader and the Head of Place despite the effort made by the appellant.

- Significant evidence was provided by the appellant prior to the enforcement notice being issued that was blatantly dismissed by the enforcement team leader and seemingly withheld from the Head of Place.

- Significant costs were incurred by the appellant within the initial investigation providing comprehensive evidence that was not taken into account. These costs are unambiguously wasted due to the LPA withholding the evidence from the Head of Place and disregarding it completely.

The costs associated with the appeal process in this case could have been avoided by on-going sensible case management which is a reasonable expectation of a planning authority. The planning authority have incurred considerable expense themselves from the public purse in pursuing formal enforcement action, along with the planning inspectorates' costs and the appellants costs.

I conclude that the LPA have not substantiated their reasons for refusal with any objective analysis that the adopted policies of the Local Plan have been harmed by this development, mainly because the alleged visual impact to local amenity from the street scene is unfounded. That it was not expedient to take formal enforcement action as a result of their unfounded assertions.

The costs associated with unnecessary and wasted expense due to unreasonable behaviour within the appeal process are recoverable on satisfactory evidence that the threshold test 'on the balance of probability' has been met.

I believe that the threshold test has been met, and consequently I respectfully request that the Inspector exercise their statutory powers to sanction the Local Planning Authority by making a full cost award in favour of the appellant.

End of Statement.

Cost Award Application

Enclosures List:

APP/M1710/C/24/3349196

Appendix 'A':

Document 1: Email correspondence dated 11th April 2024 to Ms Bebee.

Document 2: Email response dated 18th April 2024 from Mr Brendon Flynn.

Document 3: Email correspondence dated 15th May 2024 to Mr Brendon Flyn.

Gmail DOCUMENT 1

John Saunders <john.saunders120@gmail.com>

Re: Attached photos

1 message

John Saunders <john.saunders120@gmail.com> 11 April 2024 at 11:02
To: Ben Bassett [redacted]

Hi Ben,

I have decided to write to the case officer on your behalf outlining my initial concerns as your agent. They will follow later.

I think it would be worthwhile sending them a written notification that you have instructed an agent to try and resolve the issues prior to the enforcement notice being issued. In this regard please see the attached.

Dear Ms Bebee,

Re: 23/00095/CMP Site Address: 59 Hazleton Way, Waterlooville, PO8 9BP

Thank you for your letter of 2nd April 2023 that outlines the planning position following the submission of our evidence, and the planning officers formal opinion that planning permission would not receive officer support should a planning application be made.

The decision by the LPA to issue an enforcement notice to remove the alleged breach of planning control has caused us significant stress and concerns that the LPA has not fully evaluated the character of the locality of the site, being within a built up area, the existing structures within the front gardens of neighbouring properties, and the Planning Practice Guidance supporting the NPPF.

In the first instance I would be grateful if you could outline the policy/policies that are considered to be harmed by the alleged breach and confirm or otherwise if the local councillor has delegated this decision/action to the enforcement department. It would also be helpful if you could set out how the structure harms the policy objectives in this instance. It is the opinion of our planning advisor that the supporting evidence we have and can further provide would succeed on appeal and that the enforcement notice would have very little chance of being upheld and would be quashed. Of course it should be stressed that a full award of costs against the LPA would be made.

The planning department has taken a view based on limited evidence that in our planning advisors view does not carry the weight required to initiate formal enforcement proceedings. You have confirmed that only one member of the public has complained about the alleged breach of planning control which carries very little weight that it is in the public interest to pursue formal enforcement action. I await your response to this correspondence at your earliest convenience please, advising the information requested. Assuring you of my continued cooperation in resolving this matter. Kind regards Mr Bassett.

On Wed, 10 Apr 2024 at 19:00, Ben Bassett [redacted] wrote:

Sent from my iPhone

Gmail DOCUMENT 2. John Saunders <john.saunders120@gmail.com>

Fwd: 23/00095/CMP Site Address: 59 Hazleton Way, Waterlooville, PO8 9BP

1 message

Ben Bassett [redacted]
To: john.saunders120@gmail.com

18 April 2024 at 15:56

Sent from my iPhone

Begin forwarded message:

From: "Flynn, Brendan" <Brendan.Flynn@havant.gov.uk>
Date: 18 April 2024 at 11:09:16 BST
To: [redacted]
Cc: "Bebee, Sophie" <sophie.bebee@havant.gov.uk>
Subject: Re: 23/00095/CMP Site Address: 59 Hazleton Way, Waterlooville, PO8 9BP

Dear Mr Bassett,

Thank you for your e-mails to my colleague Sophie Bebee.

I would like to achieve an equitable solution however the development remains vulnerable to enforcement action as it does not benefit from permitted development rights. I note you sought preapplication advice and the response is below . I have added the relevant policy for your information.

It remains open to you to submit a planning application and appeal the outcome if you believe the Local Planning Authority have not correctly applied their own policies. If an application is not forthcoming within 28 days, I will consider the expediency of issuing an enforcement notice without further delay.

Kind regards

Brendan Flynn

Planning Enforcement Team Leader

The constructed storage shed and cycle shelter are considered out of context with the area and the street scene. The significant dimensions of the shed, being fixed and located prominently at the front of the property, with very limited existing screening makes the structure highly visible from the roads and the public realm. Furthermore, the surrounding area is characterised by low front boundary treatment and open front area space, it is deemed that the new structure has therefore resulted in an adverse visual impact within the street scene and would set a precedent for inconsistent and out of character front outbuildings. Therefore, it is unfortunately considered unacceptable and would not receive officer's support were a planning application to be submitted.

Such an application would considered to be contrary to policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the Havant Borough Council Borough Design Guide SPD 2011 and the National Planning Policy Framework, all of which seek to ensure development responds positively to the context

Gmail DOCUMENT 3 John Saunders <john.saunders120@gmail.com>

Planning Enforcement Investigation Response.

1 message

John Saunders <john.saunders120@gmail.com> 15 May 2024 at 12:18
To: Ben Bassett [redacted]

Hi Ben,
Please find the attached evidence that will need to be submitted today.

scan0665 Ben Bassett Enforcement Planning Sta...

The enclosures list (scan 0666) also needs to go with this. I have provided the contents of the email that needs to be sent with this evidence below.

Dear Mr Flynn,

Thank you for allowing us the time to provide a planning application. Unfortunately, the 28 days time frame you have allowed is insufficient and therefore we have instructed our planning advisor to prepare our evidence which you have indicated you will consider in determining the expediency to take formal action against the alleged breach of planning control.

The evidence we rely on is by way of a 'planning statement' with extensive photographic evidence showing the site and its surroundings. The examples we have provided are of similar structures within the locality of the site and are only a small representation of what actually exists within the Hazleton Estate as a whole. Taking this evidence into account we have been advised that any enforcement notice issued to remove this structure, which will be completely screened by the existing landscaping within an acceptable time, is more than likely to be quashed at appeal.

We have been advised that we will need to pay double the fees under ground 'a' of any planning appeal we make, but that is a consequence of not having enough time to prepare an application as you would under normal circumstances, that would offer the opportunity to provide the same planning statement and evidence that we are providing now.

The planning system is not designed to punish people for having the right to enjoy the property they own. It is in place to permit development that accords policies that are adopted within Local Plans. It is a matter of fact and degree that national planning policy and the policies the LPA refer to "*seek to ensure development responds positively to the context of the area, are of high-quality design and correspond with or enhance surrounding development and are sensitively integrated with no adverse effects on the street scene and visual amenity*". Whilst it would be a stretch to say the development is of high quality design it is in context with its setting and the surrounding area. Moreover, it will not be visible when the landscaping has matured satisfying local distinctiveness within the street scene.
We hope that you will consider the evidence favourably and make the decision to take no further action in these proceedings. Thank you. Kind regards Mr and Mrs Bassett.

Tel:
Mob:

scan0666 Enclosures List Ben Bassett Enforcement Statement & Exhibits May 2024.pdf
256K