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## Costs Decision

Site visit made on 30 July 2019

**by R E Jones BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 August 2019**

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### **Costs application in relation to Appeal Ref: APP/L1765/W/19/3228487 Orchard Gate, Lordswood, Highbridge SO50 6HR**

- 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 and Mrs Williams for a full award of costs against Winchester City Council.
  - The appeal was against the refusal of planning permission for the use of existing detached outbuilding as 'granny' annexe for family accommodation ancillary to the main dwelling (retrospective).
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### **Decision**

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

### **Reasons**

2. The appellants submit that the Council has acted unreasonably in that by refusing planning permission it has sought to prevent development which should clearly be permitted in accordance with local and national planning policy and other material considerations. Further, the Council has not justified the reason for refusal with any detailed appraisal of the scheme or the impacts of the proposal. This, in the appellant's view, constitutes unreasonable behaviour.
3. The National Planning Practice Guidance (PPG) 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.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council's Planning Officer concluded that the granny annexe was acceptable and in accordance with local development plan policies. Favourable consideration was given to the scale and location of the granny annexe as well as the personal circumstances of the case. Furthermore, it was submitted that a planning condition would ensure that it was used in connection with the main house, thereby safeguarding against the potential of it being used unlawfully as a separate dwelling house.

This follows the principle of using a condition to enable development to proceed by mitigating the adverse effects of the development where it would otherwise have been necessary to refuse planning permission.

6. Further information has been provided by way of background to its decision, but the Council's case rests on its contention that, members of the Planning Committee were given all the information and material considerations of the case to scrutinise before making their decision to refuse permission. However, I have seen no substantive evidence to reasonably justify a conclusion that the appeal proposal is tantamount to a new dwelling and how it conflicts with the policies referred to. I acknowledge from the Planning Committee minutes that deliberation of the case took place, but there are no details of a clear and convincing justification of the alleged harm arising and of how that led to the Council's refusal reason, and particularly so given the condition proposed by the appellants and recommended by its Officers.
7. In the planning judgement, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG, and the appellant has been faced with the unnecessary expense of pursuing the appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

### **Costs Order**

9. 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 Winchester City Council shall pay to Mr and Mrs Williams, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Winchester City 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*R. E. Jones*

INSPECTOR