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## Costs Decision

Site visit made on 16 February 2023

**by Chris Forrett BSc(Hons) DipTP MRTPI**

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

**Decision date: 15 May 2023**

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### **Costs application in relation to Appeal Ref: APP/H1840/D/22/3299139 Giardinelli, Pensham, Pershore, Worcestershire WR10 3HB**

- 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 & Mrs Sam Di Marco for a full award of costs against Wychavon District Council.
  - The appeal was against the refusal of planning permission for a pitched roof on an existing detached garage with staircase to roof space without complying with a condition attached to planning permission Ref W/01/00852/PP, dated 27 June 2001.
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### **Decision**

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

### **Reasons**

2. 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.
3. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations. Other grounds include that the Council fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. In summary, the applicant sets out that the Council has acted unreasonably on the basis that the garage has the potential to operate as a self-contained dwelling and the perceived over-development of the site. In refusing the application the Council has not considered the merits of the application in-front of it but made unsubstantiated and unfounded assumptions about the possible future use of the garage. The Council has also failed to consider the advice in the National Planning Policy Framework (the Framework) in respect of the tests for the imposition of planning conditions and is perpetuating its unreasonable behaviour by refusing to allow the re-wording of the condition as suggested by the section 73 application.
5. Additionally, the use of the first floor of this existing garage for incidental domestic purposes would patently not result in 'over development' as the Council asserts. There is no justifiable reason to refuse the application and the Council has unreasonably prevented and delayed development which

- should clearly be permitted. There is also no evidence in support of the Councils case, and nothing other than vague and generalised assertions.
6. In response, the Council considers that as a householder appeal and a fast track procedure with no technical issues, it did not require the expertise of a planning consultant. There were no complex planning issues or technical issues to address and the applicant could have submitted the appeal without the need for a planning consultant. It is also stated that it was not unreasonable for the Council to refuse the application.
  7. It is further stated that whilst the applicant contends that the original condition was unreasonable, such conditions are used around the country in some developments and in the Councils view the inclusion of such a condition is reasonable. Furthermore, this condition could have been appealed at the time of that decision.
  8. Finally, the Council state that the garage is currently incidental to the main domestic use, and that the variation of the condition would result in the garage being used for ancillary accommodation which is different to incidental use. The Council criticise the applicant in that the words 'incidental' and 'ancillary' have been used interchangeably.
  9. Any Planning Committee decision which goes against officer advice is not a reason to give an award of costs in itself as the Committee were entitled to come to their own conclusions on the merits of the proposal. However, a key issue is whether the Council have provided sufficient evidence to substantiate their reason for refusal.
  10. The minutes of the Planning Committee meeting give very little detail on how the decision to refuse the application was arrived at. There is very little explanation of this in the Councils response to the application for costs.
  11. In my decision I found that the original condition went beyond the scope of the original application, and this is a point acknowledged in the Officers' report to committee. The Council have not provided any real evidence to demonstrate that this is not correct or any meaningful justification on why the original condition (or indeed a varied condition) is necessary. To state that the original condition could have been appealed at the time of the (original) decision completely misses the point on whether it should have been imposed in the first place, or whether the exact wording of the condition met the legal tests.
  12. In respect of the interchangeable use of the words 'incidental' and 'ancillary', the application itself stated that the proposal was to allow for 'incidental' use. It is on this basis that the application should have been determined on. However, it appears that the Council also became confused as the recommended condition put to the Committee, and that supplied with the appeal questionnaire, refers to an 'ancillary' use.
  13. Finally, the decision of the applicant to employ a planning consultant to prepare the appeal statement and costs application, and the cost associated with that, is not relevant as to whether the Council has acted unreasonably in refusing the planning application. Whilst the employment of a consultant to undertake the work for the applicant has incurred costs, this is a perfectly normal and reasonable course of action to take when faced with such a planning decision.

14. Taking all of the above matters into account, I find that the Council has not provided sufficient evidence to substantiate their reason for refusal. Furthermore, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, there is no reason why a condition, such as the one on the original permission, is necessary to make the development acceptable in planning terms.
15. The refusal of planning permission therefore constituted unreasonable behaviour contrary to the guidance in the Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
16. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

### **Costs Order**

17. 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 Wychavon District Council shall pay to Mr & Mrs Sam Di Marco, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Wychavon District 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.

*Chris Forrett*

INSPECTOR