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## Costs Decision

Site visit made on 16 April 2013

**by G M Hollington MA, BPhil, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 9 May 2013**

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**Costs application in relation to Appeal Ref: APP/U1240/A/13/2191083  
2 Insley Crescent, Broadstone, Dorset, BH18 9BA**

- 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 Peter Townsend for a full award of costs against East Dorset District Council.
  - The appeal was against the refusal of planning permission for conversion of detached garage to self-contained dwelling to be used in conjunction with 2 Insley Crescent (for occupation by family member).
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### Decision

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

### Reasons

2. Circular 03/2009: *Costs Awards in Appeals and Other Planning Proceedings* 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 applicant's case for an award of costs rests on whether the local planning authority (LPA) prevented or delayed development which should clearly be permitted having regard to the development plan, national policy statements and any other material considerations; whether it produced evidence to show clearly why the development cannot be permitted; and whether it showed good reason for accepting, or rejecting, consultees' advice. These are tests contained in paragraphs B15, B16, B23 and B24 of the circular.
4. The LPA considered the planning application on the basis of the proposed accommodation being self-contained, as it considered the floor plans showed it could be occupied thus and the application form initially stated the proposal was "to change existing garage to family residential", with a gain of one one-bedroom market house. The LPA considered the proposal to be tantamount to a new dwelling and so it does not consider it misdirected itself.
5. The officer's report accordingly treated the proposal as a new dwelling and not an annexe. On this basis, the proposal could not clearly be permitted having regard to the development plan, national policy statements and any other material considerations, and the LPA produced evidence to show clearly why such development cannot be permitted. It also showed good reason for accepting the advice of Natural England and the Highway Authority.

6. However, the description of the proposed development on the application form was changed to "conversion of detached garage to self-contained dwelling to be used in conjunction with 2 Insley Crescent (for occupation by family member)" and this was the wording used in the decision notice and the officer's report.
7. This description could be regarded as ambiguous, but the design and access statement explains the applicant and his partner have two children aged between 19 and 22 years who wish to move near to them when they finish university, and two elderly mothers who, if they needed care, would also need to be close. Furthermore, this statement refers to the intended sharing of the washing machine/tumble dryer facilities "in the main house".
8. While the physical form of the proposed development simply as shown on the plans would suggest the possible formation of a separate unit of accommodation, the above considerations and the lack of an independent access other than from the enclosed back garden indicate the occupier(s) would not live entirely independently.
9. Furthermore, a planning condition could ensure the annexe would be occupied ancillary to the existing dwelling, thus overcoming the justified planning objections to use as a separate dwelling. Circular 11/95: *The Use of Conditions in Planning Permissions* provides a model condition for use in such circumstances but the option to impose this was not considered in the officer's report, it only stating that a section 106 planning obligation was offered but not considered to make the application acceptable.
10. The failure to impose a planning condition on a grant of planning permission where a condition could effectively have overcome the identified objections is itself a circumstance which may lead to an award of costs against a LPA (paragraph B29 of the circular refers).
11. In this instance, the failure to consider the proposal on the correct basis, with the imposition of a planning condition, meant that the LPA failed to show that the development could not clearly be permitted having regard to the development plan, national policy statements and any other material considerations, and the LPA did not produce evidence to show clearly why the development cannot be permitted.
12. It is not clear what information was supplied to the relevant consultees, Natural England and the Highway Authority, and I have not seen the former's response. The highway authority treated the proposal as being for a one-bed dwelling rather than applying the exemption where there is no additional residential unit but, having failed to consider imposing a planning condition, the LPA also failed to demonstrate good reason for accepting or rejecting the consultee's advice.
13. Overall, therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that an award of costs is justified.

### **Costs Order**

14. 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 East

Dorset District Council shall pay to Mr Peter Townsend, the costs of the appeal proceedings described in the heading of this decision.

15. The applicant is now invited to submit to East Dorset 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. 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.

*G M Hollington*

INSPECTOR