

## Costs Decision

Site visit made on 10 January 2014

**by K E Down MA (Oxon) MSc MRTPI MBS**

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

**Decision date: 20 January 2014**

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**Costs application in relation to Appeal Ref: APP/X5210/A/13/2202108  
Land at Ginger and White, 2 England's Lane, Belsize Park, London, NW3  
4TG**

- 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 Ms Tonia George for a full award of costs against the Council of the London Borough of Camden.
  - The appeal was made against the refusal of planning permission for a low level extraction system and enclosure to the rear commensurate with existing use within conservation area.
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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 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. It is clear that planning authorities are not bound to accept the professional or technical advice given by their own officers or that received from statutory bodies or consultees. In this case the fact that the Council's Environmental Health Officers raised no objections to the proposal does not automatically mean that a refusal of permission on grounds of noise and odour would be unreasonable.
  4. However, authorities will be expected to show clearly why the development cannot be permitted. At appeal they will be expected to produce evidence to substantiate their reasons for refusal with reference to the development plan and all other material considerations.
  5. In terms of the effectiveness of the proposed extraction system, this was assessed by the technical officers in the context of the submitted details and a noise report and found to be acceptable and compliant with Council policy. I am satisfied that the material submitted was sufficient to enable a proper assessment to be made. The Council has provided no credible evidence to support its claim that, notwithstanding this unambiguous advice, the proposed
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system would be ineffective and cause harm to the living conditions of neighbours.

6. With regard to conditions, paragraph B25 of Circular 03/2009 states that a planning authority refusing permission on a ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the development to go ahead. Planning officers ought to have been aware that the proposed conditions put forward by the technical officers could be re-drafted to comply with the tests in Circular 11/95. Indeed, there is evidence that the Council has in recent years used conditions to control similar matters at another site and there is nothing to suggest that these have been found to be unenforceable or otherwise in conflict with the circular.
7. The Council suggests that had the appellant complied with the conditions on the original café/restaurant (A3) permission the appeal proposal would have been unnecessary. That may be so. However, the appellant was entitled to seek permission for an alternative extraction system to that originally permitted and failure to comply with the earlier conditions does not justify the Council's refusal of the appeal proposal against clear technical advice and without proper consideration as to whether conditions that would comply with Circular 11/95 could be imposed to enable the development to go ahead.
8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full 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 the Council of the London Borough of Camden shall pay to Ms Tonia George, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to the Council of the London Borough of Camden, 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.

*KE Down*  
INSPECTOR