
Costs Decision

Site visit made on 26 November 2013

by Paul Freer BA (Hons) LL.M MRTPI

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

Decision date: 7 January 2014

Costs application in relation to Appeal Ref: APP/X5210/A/13/2195754 44 Belsize Lane, London NW3 5AR

- 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 B Joseph for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of planning permission for a retrospective application relating to the installed residential outdoor heat pump units at rear end of first floor level.
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Decision

1. The application for an award of costs is refused.

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. The essence of the appellant's claim is that the Council has consistently overlooked the planning history relating to the site, resulting in a decision that is not consistent with that planning history and is consequently unreasonable. The appellant refers in particular to the comments made by the Inspector in determining a recent enforcement appeal (APP/X5210/C/11/2163296). In that decision, due to the fact that the rear of the building is completely screened from public views, the Inspector concluded that "little weight" attached to one of the policies that the Council subsequently relied upon in refusing planning permission for the development proposed under the current appeal.
4. I recognise that consistency in decision making is important, and that relevant planning history is a material consideration in the determination of planning applications to which a local planning authority should have regard. In this respect, the Officer Report makes clear reference to the planning history and it is clear to me that the Council had regard to that history. However, the acoustic enclosure is materially different to previous proposals relating to this site, including that subject to the enforcement appeal. I therefore consider that the local authority was entitled, and indeed required, to determine the application for the acoustic enclosure on its own merits. On that basis, I consider that the stance adopted by the Council did not amount to the situation described in Paragraph B29 of Circular 03/2009 whereby a local planning

- authority persists with objections to a scheme which an Inspector had previously indicated as being acceptable.
5. In the context of the Council's consideration of the proposal, I am mindful of the advice at Paragraph B18 of Circular 03/2009. This paragraph indicates that where the outcome of an appeal turns on an assessment of the character and appearance of a local area, it is unlikely that costs will be awarded if realistic and specific evidence is provided about the context of the proposed development. The Council's Officer Report includes a section dealing with the issue of character and appearance of the conservation area in which the Council's concerns in relation to this issue are clearly articulated. Whilst I have come to a different conclusion on the merits of the proposed development, in my view the reasons given by the Council constitute realistic and specific evidence in the context of Paragraph B18 of Circular 03/2009.
 6. I recognise that the Inspector determining the enforcement appeal considered that "little weight" attached to Policy DP25 of the Camden Development Policies 2010-2025. The Council concedes in the Officer Report that the acoustic enclosure proposed under the current appeal would not be visible from public view points and, whilst the Officer Report refers to the enclosure being visible from neighbouring properties, it is evident that the Inspector in the earlier appeal had taken these views into account in reaching his conclusion that "little weight" attached to Policy DP25. Consequently, I consider that the weight attached by the Council to Policy DP25 in relation to the current proposal was inconsistent with Inspector's decision in relation to the enforcement appeal.
 7. However, I am also mindful that the Council cited two other policies in the reason for refusal, both of which were also cited in relation to the earlier enforcement appeal. Although the Inspector in that appeal found that the development complied with those policies, it is clear that he considered them to be material to his consideration. The National Planning Policy Framework confirms that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Consequently, it was in my view reasonable for the Council to seek to rely upon those policies again in relation to the application subject to the current appeal.
 8. The corollary of accepting that the Council was entitled to rely upon those other policies is that the outcome of the planning application for the acoustic enclosure is unlikely to have been different even if the Council had attached little or no weight to Policy DP25 in reaching its decision. In my view, it is therefore likely that an appeal would not have been avoided even if the Council had not relied upon Policy DP25 in refusing planning permission.
 9. I note that the appellant considers that the Council acted unreasonably by not affording the appellant an opportunity to refer to the relevant parts of the appeal decision before the application was determined. In response, the Council indicates that an early indication was given to the appellant that the proposal may be considered unacceptable for the reasons that subsequently led to the refusal of planning permission. In any event, the Council relied on other policies in addition to Policy DP25 in refusing planning permission for the acoustic enclosure. Consequently, even if the appellant had been successful in convincing the Council not to attach weight to Policy DP25, further reference to the earlier appeal decision would also have confirmed that these other policies

had been material to the Inspector's decision. I am therefore not persuaded that the conduct of the Council was unreasonable or that further reference to the earlier appeal decision would have led to the Council arriving at a different decision, thereby making an appeal unnecessary.

10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

Paul Freer

INSPECTOR