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## Costs Decision

Site visit made on 16 April 2012

**by David Prentis BA BPI MRTPI**

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

**Decision date: 30 April 2012**

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### **Costs application in relation to Appeal Ref: APP/X5210/A/11/2166638 3 Kidderpore Avenue, London NW3 7SX**

- 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 Cathcart Limited 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 the excavation of a basement to provide additional residential accommodation including a swimming pool and underground parking facilities to existing dwelling house (Class C3).
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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 application had been recommended for approval but committee members are not bound to follow such advice provided there are reasonable planning grounds for taking a contrary decision. Having regard to the minutes of the committee meeting it appears that the members took account of the various technical reports which had been submitted, including the independent appraisal of the application documents provided by Arup.
4. The key point at issue between the Council and the appellant was the degree of detail required in order to properly apply the tests of Policy DP27. In particular, the Council considered that planning permission ought not to be granted until such time as structural appraisals of two adjoining properties had been carried out together with a further assessment of likely damage based on cautious or conservative assumptions regarding ground movement.
5. The concluding paragraph of an email from Arup to the Council<sup>1</sup> included the following:

*It is clear from all parties involved that more work is required prior to a detailed design set of drawings being available. What is not clear is when such information should be presented and to whom; this will be considered in the planning process.*

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<sup>1</sup> Dated 1 September 2011, reproduced at Appendix 7 of the appellant's statement

Having considered Arup's advice, the Council decided that the further work should be carried out prior to any decision to approve the application.

6. In my appeal decision, I have reached a different conclusion. In so doing, I have attached greater weight to the appellant's evidence than the Council did, for the reasons given in my decision. I have also attached significant weight to the Agreement which includes provision for the approval by the Council of a Detailed Basement Construction Plan. Whilst the officer's report recommended the heads of terms of such an agreement, the Agreement itself was only completed after the Council's decision. Overall, whilst I have not agreed with the Council, I consider that the Council's decision was a reasonable exercise of planning judgement given the information available at that time.
7. The appellant argues that the Council did not attach sufficient weight to the previous appeal decision on the same site. It is clear from the committee minutes that the decision was taken into account. Nevertheless, it appears to me that the committee members had genuine concerns which arose from the material submitted with the appeal application.
8. The appellant also suggests that the Council's decision was inconsistent with decisions taken on other basement developments in Camden. However, as the particular circumstances affecting such decisions will vary considerably from site to site I attach little weight to that point.
9. In conclusion, it has not been demonstrated that the refusal of planning permission was unreasonable. The application should not therefore succeed.

*David Prentis*

Inspector