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## Costs Decision

Site visit made on 7 November 2011

**by Bern Hellier BA (Hons) MRTPI**

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

**Decision date: 22 November 2011**

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### **Costs application in relation to Appeal Ref: APP/X5210/A/11/2156491 98 Frognal, London, NW3 6BX**

- 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 Lars Bane for a full award of costs against the Council of the London Borough of Camden.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for existing north facing porch replaced with new.
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### **Decision**

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

### **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 advice in Paragraph B18 of the Circular is that matters of judgement about the effect of development on the character and appearance of a local area should not normally attract costs if they are supported by realistic and specific evidence. The starting point for the Council is that the existing porch is a positive design feature integral to, and consistent with, the style of the main dwelling and a feature that was common to the four semi-detached properties.
4. Whilst I do not agree that the existing porch makes a positive contribution to the Conservation Area, there is a considerable element of subjectivity involved in deciding on the importance to be attached to an original design feature. I am satisfied that the statement submitted by the Council, including paragraphs 5.4 to 5.8, provides adequate justification for its stance.
5. I do not agree with the appellant that the Council should have attached greater weight to the stated intention to demolish the existing porch, notwithstanding the outcome of the appeal. The proposal should be assessed on the basis of the existing situation and the quality of the proposed replacement. There is no certainty that the porch would be demolished if the appeal were dismissed. After all it would leave the appellant without a porch.
6. I also do not agree with the appellant that the significant alterations carried out to the adjoining property, 96 Frognal, set a precedent. These works introduced

a plain, vertical style to the elevations of that property such that the retention of the original porch would have been unsatisfactory. The alterations are not visible from the public domain and were approved before the Article 4 Direction was introduced. On the other hand the appeal proposal simply replaces the porch element on the front elevation. Its replacement still has to be assessed against the form of the original dwelling. There is little helpful comparison between this and the appeal proposal.

7. I agree that the Council was wrong to refer to wood as an inappropriate material especially after the mistake was pointed out. Nonetheless the substantive concern with the design/style of the porch remains and correcting the error would not have changed the decision of the Council. It was also unhelpful to submit the putative reasons for refusal late in the day although it would appear that there had been feed back to the appellant during consideration of the application. Whilst these two matters are examples of unreasonable behaviour it did not lead to additional costs.
8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

*Bern Hellier*

INSPECTOR