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# Costs Decision

Site visit made on 8 November 2011

**by Joanna Reid BA(Hons) BArch(Hons) RIBA**

**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/11/2154886  
Unit 3, 44 St Paul's Crescent, London NW1 9TN**

- 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 Christo & Co 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 "change of use of ground floor B1 commercial unit to incorporate unit into the first floor residential accommodation forming a 4-bed 3-storey unit".
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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 appellant made a timely application for an award of costs.
4. The Circular advises that circumstances which may lead to an award of costs against a planning authority include, at bullet point 5 of paragraph B29, not determining like cases in a like manner. The similar and adjoining live/work units at Units 3 and 4 were in the same development, and the applications were submitted to the Council within a short period of one another. The relevant Development Plan policies were the same in both cases. The 2 units were marketed by the same agent, and the evidence in each case was practically the same. For the Council to find the evidence in one application to be acceptable, and very similar evidence for the other to not be so, without any material change in circumstances, was unreasonable behaviour.
5. Paragraph B15 of the Circular states that planning authorities will be at risk of an award of costs against them if they prevent or delay development which should clearly be permitted, having regard to the Development Plan, national policy statements and any other material considerations. Policy DP13 states that the Council will resist a change to non-business use unless it can be demonstrated that a building is no longer suitable for its existing business use; and there is evidence that the possibility of retaining, reusing or redeveloping the building for a similar or alternative business use has been fully explored over an appropriate period of time. The text to Policy DP13 of *Camden's*

*Development Policies 2010* (DP) explains that the applicant must submit evidence of a thorough marketing exercise, sustained over at least 2 years. The live/work use was marketed for one year. An alternative business use of the ground floor, in accordance with DP Policy DP13, was marketed for a further 2 years. There was no requirement in DP Policy DP13 for the live/work unit to be marketed as a live/work unit for a period of 2 years. To misinterpret the Council's policy was unreasonable behaviour.

6. Furthermore, whilst each case should be determined on its merits, the effect of the proposed development on the 2 remaining live/work units in the terrace was not a point made in the Council's written representations for the appeal. To introduce this new point in their response to the application for costs, after the final comments for the appeal had been submitted, and in the absence of exceptional circumstances, was also unreasonable behaviour by the Council.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

8. 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 Christo & Co the costs of the appeal proceedings described in the heading of this decision.
9. 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.

*Joanna Reid*

INSPECTOR