



Costs Decision

Site visit made on 8 November 2011

by Bern Hellier BA (Hons) MRTPI

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

Decision date: 24 November 2011

Costs application in relation to Appeal Ref: APP/X5210/A/11/2157574 158-164 Royal College Street, London, NW1 0TA

- 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 Hallmark Property Group for a full award of costs against the Council of the London Borough of Camden.
 - The appeal was against the refusal of an application for the approval of railings above the front lightwells pursuant to condition No.6 of planning permission Ref 2009/5128/P, granted on 15 July 2010.
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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 appellants argue that the requirement for railings represents an unwarranted change of approach by the Council, that the reasons for refusal are not substantiated and that the Council failed to take account of a previous appeal decision on the site.
4. An application¹ for conversion from retail to residential including a front lightwell and railings on the appeal site was refused on 7 January 2008. However the reasons for refusal were not related to the visual impact on the Conservation Area. An appeal (APP/X5210/A/08/2066369) against this decision was later dismissed on 24 July 2008 but the Inspector stated that *the overall appearance of the building would not change significantly and I agree with the Council that the proposed development would preserve the character and appearance of the conservation area.*
5. A further application² was submitted to address the previous reasons for refusal. The Committee report recommending approval to this application on 17 July 2008 did not express any concern about railings. Indeed it referred to the previous application stating that *the external alterations under this refused scheme, including the rear extensions, basement lightwells and alterations to*

¹ 2007/4584/P submitted 10 September 2007, refused 7 January 2008, dismissed on appeal 24 July 2008

² 2008/0448/P submitted 18 January 2008, approved (following signing of S106) 13 November 2009

the fenestration were identical to this current proposal and did not form reasons for refusal. The advice in the Committee report could not be clearer. However the Committee was advised verbally by officers that grilles should be used rather than railings and that an additional condition should be imposed accordingly.

6. I am not persuaded that the Council has ever properly addressed the conflict in its approach in dealing with the two applications in 2008. There was apparently no change in circumstances. This was unreasonable behaviour as described in paragraph 29 of the Circular.
7. The case for the Council is principally set out in Sections 4 and 5 of its Statement and refers to existing policies which reinforce the importance of protecting the character and appearance of conservation areas. Its planning guidance recommends the use of grilles rather than railings in some instances¹ but the appeal site does not appear to be one of the instances described. Its case does not take account of the change in the use of the appeal site from retail to residential. Furthermore, in restricting its visual analysis to the street scene between Randolph Street and Baynes Street, it is being unreasonably blinkered. Whilst impact on character and appearance is a matter of judgement, paragraph B18 of the Circular states that this should not be on the basis of vague, generalised or inaccurate assertions. In this case I am not persuaded that there is adequate objective analysis to justify the conclusion that there is harm to the Conservation Area.
8. In a previous decision on the appeal site in 2006 a conversion scheme² was allowed on appeal with railings along the frontage (APP/X5210/A/05/1191530). However the lightwells in this instance were set back underneath the first floor and the railings followed the building line. The Council acted reasonably in deciding that this did not set a precedent for the use of railings in front of the building line.
9. I find that the Council has not provided realistic and specific evidence of harm associated with the railings. It also altered its view on the acceptability of railings in 2008 without adequate justification and in the face of an appeal decision which did not support its position. This is unreasonable behaviour. If the Council had acted reasonably the appeal and the costs associated with it would have been unnecessary. I conclude, therefore, 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

10. 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 Hallmark Property Group, the costs of the appeal proceedings described in the heading of this decision.
11. 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

¹ Camden Planning Guidance : Basements and lightwells (CPG4) paras 2.72-2.73

² 2005/3266/P submitted 3 August 2005, refused 3 October 2005, allowed on appeal 28 March 2006.

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.

Bern Hellier

INSPECTOR