The Planning Inspectorate

Costs Decisions

Inquiry held on 7, 8 & 9 June 2011
Site visit made on 9 June 2011

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 27 September 2011

Costs applications in relation to Appeal A: APP/X5210/E/11/2144575
18-20 Elsworthy Road, London NW3 3DJ &
Appeal B: APP/X5210/A/11/2144566
18-20 Elsworthy Road & 15 Elsworthy Rise, London NW3 3DJ

- The applications are made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 74, 89 and Schedule 3; the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6; and the Local Government Act 1972, section 250(5).
- The applications are made by Mr J A N Prenn for a full award of costs against the Council of the London Borough of Camden.
- The inquiry was in connection with appeals against the refusal of the Council to grant conservation area consent for the demolition of 18-20 Elsworthy Road and its refusal to grant planning permission for erection of building comprising sub-basement, basement, ground, first, second floor and roof storey with front and rear lightwells onto Elsworthy Road to provide 2 x 5-bedroom and 2 x 2-bedroom self-contained flats/maisonettes, following demolition of existing building at 18-20 Elsworthy Road, and erection of a single storey rear extension to existing residential building at Elsworthy Rise, comprising ground, first floor and roof storey, to provide 1 x 1-bedrom and 1 x 2-bedroom self-contained flats/maisonettes.

Decisions

1. The applications for costs are dismissed.

The Submissions

2. The appellant's written application and the Council's written response were submitted at the inquiry. The following additional points were made orally for the appellant, in response to the submissions for the Council.

3. The costs application is not concerned with the powers of the Committee or Inspector: it is concerned with the reasonableness of how the Council exercised its power. The fact that the previous Inspector's decision is not legally binding is nothing to the point.

4. With regard to considering the proposals 'de novo', it is clear from paragraph B29 of the Circular that the Secretary of State expects previous appeal decisions to be followed unless there are justifiable and reasonable grounds for not doing so. Simply disagreeing with the outcome of a previous decision and wanting to have another go can never be a reasonable basis for not following a previous appeal decision, otherwise paragraph B29 would have no effect.

5. Paragraphs B18 & 19 of the Circular would carry weight if this was the first Inspector to consider the design issues. However, once questions of design opinion have been resolved on appeal, as they were in 2010, the Council can no longer claim differences of judgement as reasonable justification for refusing permission. The Council's reference to the difference of opinion between the Committee and the 2010 Inspector as a justification for the Council's conduct is a fiction. The unreasonableness alleged in the costs applications arises from the Committee's decision. It is clear that the so-called error [of not recognising nos. 8-16 as positive contributors] had nothing to do with the Council's reasons for refusing permission.

6. The appellant has been forced into producing evidence to address the same arguments as were raised at the last appeal. There was no wish to ask the Inspector for a judgement on this scheme, when a colleague had already given one. The Council cannot rely upon the consequence of its unreasonable refusal to defend the costs application.

7. With regard to the matter of the basement, Mr Hudson has had to prepare a formal report, attend meetings concerned with preparation of the case, and appear at the inquiry. None of this would have been necessary if permission had not been unreasonably refused.

Reasons

8. 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.

9. It is understandable that the appellant considers nothing has changed since the 2010 appeals decision, sufficient to justify the Council's refusal of the current applications. I heard very little to demonstrate that, at the time of determination, the Committee refused the applications because of any new or different circumstances. Thus, having regard to paragraph B29 of the Circular, the Council's reliance on the advice in paragraph B18 relating to matters of judgement, without any further justification of substance for setting aside the 2010 Inspector's conclusions, is not a robust defence for its decision.

10. In addition, although a PPS5 assessment was submitted with the applications, there is no reference to it or to PPS5 itself in the officers' Committee report. The omission of this important material consideration is regrettable. Moreover, the 2010 Inspector's description of only nos. 2-6 as positive contributors to the CA's character and appearance does not appear to have been significant in the Committee's decision.

11. Nonetheless, I have determined the appeals afresh in the light of all the information now before me, following the inquiry proceedings. The design evidence for the Council does include an objective analysis of context, character and impact, taking account of PPS5 as well as local development plan policies. I consider this provides a respectable basis for the Council's stance.

12. PPS5 introduces subtle but important differences in the way in which proposals affecting heritage assets should be assessed. It will be apparent from my decisions that, having followed this approach, I consider there is sufficient justification to reach a different conclusion from the 2010 Inspector. On this basis, therefore, I am satisfied that the refusals are substantiated and are not

unreasonable. Thus, despite the Council's various shortcomings in its consideration of the appeal applications, the expenses incurred by the appellant have not ultimately proved to have been unnecessary.

13. With regard to the secondary matter of the basement, any approval of the redevelopment proposal would have included a condition requiring further information to be submitted to demonstrate their feasibility. Thus the technical evidence submitted to the inquiry would have to have been prepared and submitted in any event. I recognise that some additional costs will have been incurred in preparing for, and attending, the inquiry but given my findings on the main issue in these appeals and my conclusion that the refusals are not unreasonable, I am not convinced that such expense was unnecessary.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009 has not been demonstrated and that an award of costs is not justified.

Jane Miles

INSPECTOR