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## Costs Decision

Site visit made on 12 October 2010

**by Richard McCoy BSc, MSc, DipTP, MRTPI, IHBC**

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

**Decision date: 23 November 2010**

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### **Costs application in relation to Appeal Ref: APP/X5210/A/09/2119574 285-287 Finchley Road, London, NW3 6ND**

- 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 Sonar Global Investments Ltd 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 planning permission for the change of use of the existing property from a "nil-use" to a 27 unit Apart-Hotel.
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### **Decision**

1. I refuse the application for an award of costs.

### **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. Paragraph A3 of the Circular states that planning authorities should properly exercise their development control responsibilities and rely only on reasons which stand up to scrutiny. Paragraphs A22 and B16 indicate that a failure by a local authority to substantiate a reason for refusal is a reason for costs to be awarded.
4. The appellant claims that the Council acted unreasonably by failing to apply UDP policy SD3 appropriately in terms of the plain meaning of the words. It also failed, in the appellant's opinion, to provide compelling evidence in response to the matters raised as part of the lead into the appeal material, contrary to the advice in paragraph A28 of the Circular. As a consequence, the Council acted arbitrarily in its interpretation of the policy and compounded this by failing to justify its refusal in its 6-week statement.
5. The appellant therefore alleges that the Council prevented a development which should clearly have been permitted, in conflict with the advice in paragraph B15 of the Circular.
6. The application of UDP policy SD3 to this case involved a degree of judgement on the part of the Council. Notwithstanding the use of the word "commercial" which does not appear in the policy, I consider that the Council robustly argued, in the delegated report and in correspondence with the appellant, its position on the policy's relevance. This amply explained the Council's position

regarding the existing "nil-use" of the appeal site and why it was considered that the proposed Class C1 development would lead to an increase in total gross floorspace. In so doing, the Council offered relevant evidence to explain its stance and gave reasons as to why it considered the policy was applicable, and why the proposal was in conflict.

7. I find, in respect of this appeal, that the Council was correct in its interpretation of the policy and did not act arbitrarily or apply its judgement in an unreasonable manner. I conclude therefore that the Council was able to show that the reason for refusal was made on planning grounds, having regard to the development plan and other material considerations, and unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.
8. An award of costs therefore is not justified.

*Richard McCoy*

INSPECTOR