



Costs Decision

Site visit made on 23 August 2010

by Martin Brookes BA MSc MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
23 September 2010**

Costs application in relation to Appeal Ref: APP/X5210/A/10/2126845 193-195 Kentish Town Road, London, NW5 2JU

- 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 Ms Evie Demosthenous for a full award of costs against the Council of the London Borough of Camden.
- The appeal was made against the refusal of planning permission for the erection of a mansard roof extension to create one self-contained flat to existing block.

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 B15 of the Circular states that planning authorities are at risk of an award of costs if they prevent or delay development that should clearly be permitted. Furthermore, authorities will be expected to produce evidence to show why the development cannot be permitted (paragraph B16). The planning authority's decision notice should be carefully framed and should set out in full the reasons for refusal. Reasons should be complete, precise, specific and relevant to the application. Planning authorities will be expected to produce evidence at appeal stage to substantiate each reason for refusal with reference to the development plan and all other material considerations.
4. Where planning appeals involve matters of judgement concerning the character and appearance of a local area it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the proposed development. On the other hand vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in a cost award (paragraph B18). Paragraph B29 sets out examples of circumstances which may lead to an award of costs against a planning authority.
5. The Council refused planning permission on three grounds, but made it clear that two of those could be addressed by completion of a planning obligation. The appellant was willing to complete such an obligation. The appeal was therefore only made necessary because of Reason 1 of the grounds of refusal.

6. Reason 1 related to the impact of the development on the host building, on the integrity of the unaltered roofscape of the group of buildings at 189-197 Kentish Town Road and on the character and appearance of the wider area. I consider this to be reasonably complete, precise, specific and relevant to the development proposed. Relevant development plan policies were also referred to.
7. The Council's case was amplified in the officer's delegated report and in comments on the grounds of appeal. These explained the significance of the unimpaired roofline of the building at 189-197 Kentish Town Road in comparison with other properties in the area, in emphasising the visual interest of the turret/cupola at 189 Kentish Town Road and in contributing to the surrounding built environment. They explained how the mansard roof would harm the integrity of the roof and the street scene. I consider that this represents a reasonably realistic and specific substantiation of the Council's reason for refusal.
8. In relation to the specific grounds of appeal:
 - (a) The extent of the harm identified by the Council is a matter of judgement, but I consider there to be no grounds for concluding that the Council applied the tests applicable to development in a conservation area. The Council applied a test of harm, not a test of whether the development would preserve or enhance the character or appearance of the area. Furthermore, conflict with Policy B3 of the Camden Replacement Unitary Development Plan 2006 (UDP) is not confined to developments surrounding an open space or plainly visible over large areas. There was also no need for the Council to refer explicitly to the mansard being overly large, but the reason for refusal did refer to the scale of the mansard and the officer's report referred to it not being a subsidiary feature. I find no deficiency or unreasonable behaviour in respect of the Council's interpretation or application of UDP Policies B1 or B3.
 - (b) Paragraph 3.36 of the UDP allows, but does not require, the Council to require context drawings, photo-montages and models of development proposals. The Council quite reasonably concluded that it could assess the proposal without that information.
 - (c) Assessments of the significance of the turret/cupola at 189 Kentish Town Road and of the impact of the development on it are matters of judgement which I consider the Council exercised and explained in a reasonable way.
9. In conclusion, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

M P Brookes

INSPECTOR