



Costs Decisions

Hearing held & Site visit made on 12 May 2010

by Martin Andrews MA (Planning)
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**an Inspector appointed by the Secretary of State
for Communities and Local Government**

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Decision date:
14 June 2010

Costs application in relation to Appeal A, Ref: APP/X5210/A/10/2122792 7 Northington Street & 14-17 Kings Mews, London WC1N 2JF

- 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 Capitol City Ltd for a partial award of costs against the Council of the London Borough of Camden.
- The Hearing was in connection with an appeal against the refusal of planning permission for the demolition of the existing buildings and erection of a part 3, part 4 storey block comprising 6 flats.

Costs application in relation to Appeal B, Ref: APP/X5210/E/10/2122803 7 Northington Street & 14-17 Kings Mews, London WC1N 2JF

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 74, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
- The application is made by Capitol City Ltd for a full award of costs against the Council of the London Borough of Camden.
- The Hearing was in connection with an appeal against refusal of conservation area consent for the demolition of the existing buildings on the site.

Decision

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

The Submissions for Capitol City Ltd

2. The costs applications were submitted in writing by letter to PINS dated 6th May 2010. The following additional points were made orally at the Hearing.
 3. Whilst the issue of overlooking was discussed at the pre-application stage there was no discussion during the processing of the application. The appellants would have made the appeal plan amendments earlier, during the application process, if they had been told of the problem. The additional costs relate to the writing of the evidence on this issue rather than preparation of the amended drawings.
 4. In respect of the Council's costs for the drafting of the Section 106 Agreement the appellants had not been advised of these at the outset and in any event they are disproportionate to the scale of the development. Furthermore it should have been clear to the Council from the outset that because the appellants were unwilling to include the Code for Sustainable Homes in the Section 106 there was never a realistic possibility of proceeding by way of an Agreement.
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The Response by the Council of the London Borough of Camden

5. The response was made orally at the Hearing and in summary the main points are as follows, starting with the first of the three grounds for the costs claims.
6. The withdrawal of refusal reason 2 was due to a combination of the appeal scheme's amended plans and the planning permission for No. 5 Northington Street. Pre-application amendments had been insufficient and hence overlooking was still an issue during the processing of the application. Privacy screens would have added to the building's bulk.
7. In respect of the email of 12 February it was not entirely clear whether the information provided had adequately dealt with the matter. The officers were happy to have a meeting but the appeal was lodged. It is accepted that the Council did not respond immediately to the amended appeal plan but in going through the planning history of the location for the appeal statement it was discovered that the permission given to No. 5 opposite included a condition on privacy screens. When writing the appeal statement on 1 April it was concluded that this, combined with the appellant's revised plan, was adequate to protect the privacy of the occupiers of both buildings.
8. On the second ground for the costs claim, the Council has explained why it considers a Section 106 is necessary rather than reliance on a condition. Advice has been given from the Council's solicitor that their costs were not disproportionate and that as much of the ground work had already been done the preparation of a Unilateral Undertaking would have incurred only marginal additional expenditure.
9. As regards the third ground, the Council acknowledges that the phrase 'No justification' in the Refusal Notice would have been better worded as 'Inadequate justification' but this is essentially a matter of semantics. The Council's case in resisting demolition is drawn from the guidance in PPG15 and has been fully explained in both the officers' report and the appeal statement.

Reasons

10. 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.
11. Turning firstly to the application for costs for the late withdrawal of refusal reason 2, the Council has explained that its mind was only finally made up in terms of the acceptability of the amended plan (initially informally submitted on 12th February and then formally on 5th March but also including a new perspective showing long views from the end of Kings Mews) when the appeal statement was finalised on 6th April. A material factor in the withdrawal of the refusal reason was the condition attached to the consent for No. 5 Northington St for a privacy screen and this was weighed in the balance with the latest amendments.
12. Whilst I accept that there was the potential for the problem to have been resolved at an earlier date, either prior to determination or during the period until the appeal evidence was submitted, the actual window of opportunity for

- that to happen was between 5th March when all the information including a new perspective had been submitted to the Council and 6th April when the Council's statement had been completed and submitted.
13. Arguably the officers could have handled the issue more efficiently throughout, but overlooking in this instance was not a black and white issue. On reflection, and with an acquaintance of the information in respect of the privacy screen at No. 5, the decision to withdraw the reason was made as part of the appeal statement. But equally it could have been retained and left as part of the appeal deliberations with no disadvantage or penalty to the Council. It seems to me therefore that this decision was an honest one and made to be helpful on a finely balanced issue, rather a tardy concession of an indefensible position. And whilst there may be an ostensible case for a failure to adhere to the letter of paragraph B57 of the Circular, nothing that I have seen, heard or read on this issue goes close to persuading me that the Council's approach was unreasonable.
 14. As regards the Section 106, the amount of the Council's legal costs is not a matter that affects the principle of whether an award should be made under the provisions of the Circular. On the point of whether the Code for Sustainable Homes needs to be in a Section 106, I note that the Council had a 'legal view' that this was necessary to safeguard the longer term position and that this had been the arrangement secured for a number of other developments. Whilst I consider this to be an over zealous approach and that a condition could and should have been sufficient, the development was in any event refused for more fundamental reasons and I read paragraph B25 of the Circular as being more applicable to a situation where a development scheme failed to be permitted on the issue of the disputed condition(s) alone. But even if I am wrong on this point an Agreement is by definition voluntary on both sides and the appellant always had the option (which he eventually used) to proceed unilaterally. Given all the circumstances of this case I consider that the Council's behaviour on this matter stops short of being unreasonable.
 15. On the application for a full award in respect of Appeal B, I have made it clear in my Decision that on the issue of demolition of the existing buildings the arguments are finely balanced. The Council is correct to accept that the phrase 'No justification' in the reason for refusal should have been 'Inadequate justification' but this does not alter the fact that the Council were entitled to hold the view that the existing buildings should remain, as had been their position in all the previous proposals for the site. On balance I have disagreed with this approach but it is not unreasonable.
 16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated in respect of any of the grounds claimed.

Martin Andrews

Inspector