



Costs Decision

Inquiry held on 5 and 6 November and
23 December 2009

Site visit made on 5 February 2010

by **John Felgate** BA (Hons), MA, MRTPI

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

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Decision date:
8 March 2010

Costs application in relation to Appeal Refs: APP/X5210/A/09/2107216-9 18-20 Elsworthy Road and 15 Elsworthy Rise, London NW3 3DJ

Costs application by the Council

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, the Local Government Act 1972, section 250(5), and the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 74, 89 and Schedule 3
- The application is made by the Council of the London Borough of Camden for a partial award of costs against Mr J A N Prenn.
- The inquiry was in connection with four appeals against the refusal of planning permission and conservation area consent, for the demolition of the existing buildings, and the erection of new buildings comprising 2x five-bedroom, and 2x two-bedroom flats/ maisonettes fronting Elsworthy Road; plus 1x one-bedroom, and 1x two-bedroom flats/maisonettes, garaging and parking, fronting Elsworthy Rise.

Summary of Decision: The application for an award of costs is refused.

The submissions for the Council

1. On behalf of the Council, it was argued that Appeal A had no reasonable prospect of success, contrary to paragraph B13 of Circular 03/2009..
2. A previous appeal had been dismissed in August 2008, partly due to its height, mass and bulk, and because its side elevation was not sufficiently subservient to the front. The present Appeal A scheme would be taller than that previous scheme, and similar in bulk, mass and flank treatment. The Appeal A application had been submitted in May 2008, before the previous appeal decision was known, and therefore could not have responded to that decision. The Appeal C scheme had been designed subsequently, with an amended Design and Access Statement, specifically to respond to the 2008 decision. The very fact that the two current schemes were different from each other was thus an acknowledgement that Appeal A did not reflect the 2008 Inspector's concerns.
3. Appeal A had also been pursued in the face of adverse comments from English Heritage; and was based originally on drawings that had misrepresented the height of a neighbouring building, No 22 Elsworthy Road.
4. A partial award was therefore sought in respect of Appeal A only.

The response by the appellant

5. For the appellant, it was argued that paragraph B13 refers to a situation where the previous appeal related to a proposal for the same, or a very similar, development. That was not the case here. The previous appeal scheme was
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more contemporary in its design, with a flat roof. The present Appeal A scheme, like Appeal C, was more sympathetic to the conservation area.

6. Paragraph B18 of the same Circular stated that, where the issues turn on matters of judgement, and the appellant's case was supported by realistic and specific evidence, costs should not be awarded.

Reasoning and conclusions

7. 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 expense.
8. I accept that the present Appeal A scheme would be taller than the 2008 scheme, and that its overall bulk and mass would be similar. But in most other respects the two schemes are quite different, particularly in terms of the shape of the roof, the fenestration, and the building's overall styling. Although the flank elevation in Appeal A would have a bay window and dormer, the main entrance would have been at the front, unlike the previous scheme. Consequently, I consider that Appeal A's similarities with the earlier appeal scheme are less significant than the differences between them.
9. Whilst I have found the proposed design in Appeal A to be unacceptable, this was ultimately a matter of judgement; cogent and well reasoned evidence was advanced on both sides of the debate. And although English Heritage expressed some concerns, it did not formally object. In the circumstances I do not consider that the scheme could be said to have had no reasonable prospect of success.
10. Although the amended drawings incorporated slight differences in the height of the adjoining building, based on more accurate measurements, in my opinion the effect of these was not significant.
11. I conclude that the appellant did not act unreasonably in respect of the above matters, and no award is therefore due.

Formal Decision

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

John Felgate

INSPECTOR