The Planning Inspectorate

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ALLOWED
COSTS
AWARDED.

The JTS Partnership
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BRENTFORD
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Your Reference:
SC/3406

Our Reference:
T/APP/X5210/A/95/250720/P5
A/95/256444/P5

Date: 14 DEC 1995

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY MAJORSTAKE

1. I refer to your application for an award of costs against Camden London Borough Council which was made at the inquiry held at Camden on 25, 26, and 30 October 1995. The inquiry was in connection with appeals by your Client against the decisions of the Council to refuse planning permission for

(1) the erection of 9th and 10th floors on each of Blocks A and B to provide a total of 20 additional residential units, together with roof gardens and 20 additional associated parking spaces ('Appeal A'), and

(2) the erection of two additional floors on Blocks A and B with associated roof terraces, together with the provision of 20 additional parking spaces ('Appeal B')

at Blocks A and B, Boydell Court, St Johns Wood Park, London NW8. A copy of my appeals decision letter is enclosed.

2. In support of your application you referred to Annex 1 and Annex 3 of Circular 8/93, particularly the examples given in paragraphs 8, 9, 12, 15, and 16 of the latter. You said that the Council's decisions to refuse planning permission were unreasonable. Your Client had, therefore, incurred unnecessary expense by having to appeal to the Secretary of State. Your Client had given notice to the Council of the likelihood of an application for costs should the two schemes be refused. The Council had ignored the advice of its Officers and had devised grounds of refusal which were inconsistent between the two Appeals.

3. You pointed out that Councillor Mrs Swain, who gave evidence for the Council had, in answer to a question by me, said that the Planning Sub-Committee which had refused the planning applications the subject of these appeals had not identified any differences between them and the two schemes which had been allowed on appeal in 1991. She had said that it was an increase of the number of people on the appeal site which was the major factor in the Council's decisions. You say that is the wrong test, and there is no Policy basis for that test.

4. In cross-examination, Mrs Swain had said that the Council had to draw the line somewhere, and any advance on what had already been approved was unacceptable in Development Plan terms. Interpretation of Policy was difficult for Councillors who were increasingly relying on the contents of the Draft Unitary Development Plan ('DUDP') when making their decisions. You say that is the wrong approach and unreasonable. The Officers had advised the Council that the DUDP was still not finalised, but the Council had refused the schemes on the basis of the DUDP. The Council had, inferentially, invoked Car Parking policy not mentioned in the Borough Plan 1987 ('BP'), yet Mrs Swain had said that there was no objection on Car Parking policy grounds. She had accepted that your Client did not have to make up a deficiency in parking spaces, so your Client was acting consistently with the Inspector in the 1991 appeals. The Council's approach on this aspect was, therefore, unreasonable.

5. In summary, you said that the Council had failed to apply the Development Plan, had over-relied on the DUDP, and had not applied the correct tests. The Council had made its decisions due to being over-persuaded by a vociferous small minority of residents.

6. In response, the Council said that the differences between Appeals A and B and the two schemes the subject of the 1991 appeals were considerable. The Council had to consider the projects before me in the terms of both the Development Plan and the DUDP. The Council had taken proper account of the BP and the DUDP, and had not over-relied on the DUDP. The Council did not accept your interpretation of Mrs Swain's evidence. She was referring to 'density' when she spoke about the increase in the number of people. A line had to be drawn because the appeal site was under considerable strain. The Council had not accepted all the points put forward by the interested persons who had made representations to it. The Council had listened to its Officers, given proper weight to their views, and had produced a list of items [in the respective grounds of refusal] on which the Council disagreed with its Officers. The Council argued that it was wrong simply to look at the previous planning applications and decisions when there are material differences with the projects before me. The Council had renewed the planning permission for the 12 unit scheme granted on appeal in 1991, and had not acted unreasonably in refusing the current planning applications.

7. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeals, irrespective of their outcome, and costs may only be awarded against a party who has behaved unreasonably.

8. I consider that it is well-established that the Council is not bound to accept the advice of its Officers, but if it does not do so, it must show reasonable planning grounds for its decisions and produce evidence to support those grounds. The Council clearly had given greater weight to the DUDP, as if the DUDP had been adopted and the Greater London Development Plan 1976 and the BP had been superseded. In doing that the Council had overlooked Section 54A of the 1990 Act and the advice contained in PPGs 1 and 12 as to the supremacy of the Development Plan.

9. I recognise that the Council was under considerable pressure from the Boydell Court Residents Against Development ('BCRAD'). No questions appear to have been asked by the Council as to the status of BCRAD, or whether the bases for its alleged support were properly founded *eg* its omission to mention in its canvassing that your Client could proceed with either the 12 unit or 9 unit schemes allowed in the 1991 appeals. BCRAD is not the official Residents Association which was not objecting to the proposals. I consider that the Council was unduly influenced by BCRAD, which effectively sought to re-open matters which had been dealt with by the Inspector in the 1991 appeals with which it disagreed. For all these reasons, and for the reasons I have set out at length in my appeals decision letter, the Council had little justification for its decisions.

FORMAL DECISION

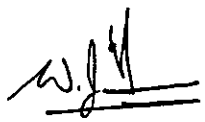
10. Accordingly in exercise of my powers under Section 250(5) of the Local Government Act 1972 and paragraphs 6(4) and 6(5) of Schedule 6 of the Town & Country and Country Planning Act 1990, and of all other enabling powers, I HEREBY ORDER that the Camden London Borough Council shall pay to Majorstake the costs of the proceedings of this inquiry, such costs to be taxed in default of agreement as to the amount thereof. The subject of the proceedings were appeals under Section 78 of the Act of 1990 against refusals of planning permission by Camden London Borough Council for

(1) the erection of 9th and 10th floors on each of Blocks A and B to provide a total of 20 additional residential units, together with roof gardens and 20 additional associated parking spaces ('Appeal A'), and
(2) the erection of two additional floors on Blocks A and B with associated roof terraces, together with the provision of 20 additional parking spaces ('Appeal B')

at Blocks A and B, Boydell Court, St Johns Wood Park, London NW8.

11. You are now invited to submit to the Chief Executive of Camden London Borough Council, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement as to the amount thereof.

Yours faithfully



W J TURNER LLB Solicitor
Inspector