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## Costs Decision

Hearing held on 20 May 2014

Site visit made on 20 May 2014

**by Lesley Coffey BA(Hons) BTP MRTPI**

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

**Decision date: 24 June 2014**

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### **Costs application in relation to Appeal Ref: APP/X5210/A/13/2210360 John Stewart House, 51 Calthorpe Street, London WC1X 0HH**

- 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 Mr Simon Firth 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 to grant planning permission for the change of use from office to residential, an additional storey at the front and a three storey extension to the rear to provide a total of 16 new residential units.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for Mr Simon Firth**

2. The application is for a partial award of costs and relates to the late evidence submitted by the Council. It was not possible to address this evidence within the appellant's statement and to do so required time both the week prior to the Hearing and at the Hearing itself.
3. Contrary to the advice within Planning Practice Guidance in relation to appeals at paragraph 47 the Council behaved unreasonably by introducing fresh and new substantial evidence. The Council also failed to follow the advice in relation to the disclosure of information. Information was only released following a request from the Planning Inspectorate, and even then it was incomplete. Full disclosure required a further request from the appellant and inspector.
4. Once it was submitted it was clear that the evidence on which the Council relied was only sought on the day that statements were exchanged. No reliance was placed on earlier e mails.
5. The substantive award relates to income thresholds in respect of rent levels. The income level of £50,000 suggested by the Council is not supported by the Council's own guidance (which was adopted 8 months prior to the Hearing) or that of the Mayor. No explanation was provided as to why the income level was chosen.
6. There was no request from the Council for information about service charges at the time of the application, or during the appeal process. Nor did the Council

provide any evidence as to comparable service charges. The Council's views are based on unfounded assertions and are not supported by evidence.

7. The Council was made aware that the late introduction of evidence would result in an application for costs. An examination of the evidence shows that it should not have been put forward.

### **The response by Council of the London Borough of Camden**

8. The information submitted did not amount to unreasonable behaviour procedurally. The information submitted did not change the nature of the case. Throughout the appeal process it was open to both parties to liaise with each other to resolve matters. The appellant could have liaised with the housing officer.
9. The submitted information was accepted by the Planning Inspectorate and it was not necessary to have an adjournment to consider it. Therefore there is no evidence that the Council has behaved unreasonably.
10. The accusations in relation to the substantive behaviour are based on vague and inaccurate assertions. These matters were discussed at the Hearing in the context of a balanced view of the proposals.

### **Reasons**

11. Regardless of the outcome of an appeal, Planning Practice Guidance advises that costs may only be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
12. The Council's appeal statement advised that it had been in correspondence with Origin Housing Association in relation to the provision of on-site affordable housing. It is however apparent from the information submitted that the Council contacted Origin at the time at which the statements were submitted. The appellant was not party to these discussions, and was advised of the response from Origin on 12 May, one week prior to the Hearing.
13. The Council only provided details of internal consultations and the correspondence with Origin on 14 May, following a request from the Planning Inspectorate, despite previously being asked for this information by the appellant. I consider the failure to share this information with the appellant amounts to unreasonable behaviour. It was necessary for the appellant to spend time addressing this matter in the days immediately prior to the appeal.
14. Notwithstanding this, the information did not change the nature of the appellant's case, nor did it give rise to the need for an adjournment. The matters raised were relevant to the Council's case, and its statement was clear that negotiations were continuing with affordable housing providers.
15. However, the Council advised the affordable housing providers that the rental level should be based on an income cap of £50,000, whereas the recently adopted CPD2 states that the income level should be £30,000. This information was only conveyed to the appellant on 15 May. No credible evidence was provided as to why the recently adopted guidance was not relied upon.

16. Although the appellant submitted no written evidence in relation to either of the offer from Origin Housing Association, or the income cap, time was taken up at the Hearing discussing both of these issues. In addition, it was necessary for the appellant to spend time addressing these matters in the days immediately preceding the Hearing. Had the Council provided the necessary information in a timely manner, or made the appellant aware of its discussions with Origin, it is probable that it would have still been necessary to discuss these matters at the Hearing and for the appellant to spent time addressing them prior to the Hearing. Therefore, whilst I accept that the Council behaved unreasonably, there is no persuasive evidence to show that this gave rise to any unnecessary expense.
17. I therefore find that unreasonable behaviour resulting in unnecessary expense, has not been demonstrated and that an award of costs is not justified.

*Lesley Coffey*

INSPECTOR