



The Planning Inspectorate

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Appeal dismissed
COSTS
AWARDED

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TO THE COUNCIL
11 1998

The Solicitor to the Council
London Borough of Camden
Town Hall
Argyle Street
London WC1H 8ND

Your Ref

CLS/ENV/EDT

Our Ref

T/APP/X5210/A/97/283311/P4

Date 07 MAY 1998

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972 SECTION 250(5)
APPEAL BY C & P ABBOTT M BIDDALL V MILLER AND VALE
AMUSEMENTS NORTH
APPLICATION FOR COSTS BY COUNCIL OF THE LONDON BOROUGH OF
CAMDEN

1 I refer to your application for an award of costs against C & P Abbott M Biddall V Miller and Vale Amusements North which was made at the inquiry held at Camden Town Hall on 17th and 18th February 1998. The inquiry was in connection with an appeal by C & P Abbott, M Biddall V Miller and Vale Amusements North against a refusal of planning permission on an application for 15 appartement residential units with ancillary basement car parking and the creation of an area of public open space at the north fairground site Vale of Health London NW3. A copy of my appeal decision letter is enclosed.

2 In support of your application you argued that while parties to an appeal must usually bear their own costs in this case a full award of costs is appropriate. In your opinion the presentation of the appellants case shows that their approach is misconceived otherwise no appeal would have been lodged. Alternatively your case is that a partial award restricted to the costs of the inquiry is appropriate as on receipt of the Council's statement the appellants should have realised the strength of the Council's position and then withdrawn the appeal against non-determination.

3 In your view it was clear that the appellants approach was misconceived for several reasons. The details of the application including the various changes did not demonstrate a thought through approach. Mr Thomson was unqualified and unclear about planning law and had not taken professional advice on this matter. If this had been done it would have avoided the need for a public inquiry which was the only appropriate



method of dealing with the appeal in view of the considerable public interest in the proposal. It was significant that Mr Thomson had not challenged a considerable part of the case presented by the Council and local residents. Finally although previously Mr Thomson had denied the relevance of planning policy he was now apparently reversing this position.

4 In response C & P Abbott, M Biddall, V Miller and Vale Amusements North emphasised that this was an appeal against non-determination and not against refusal of planning permission. The appeal had been aimed at establishing the appropriate principle for the site. Moreover it was the Council which had insisted on a public inquiry, the appellants would have been agreeable to the determination of the appeal by written representations. Alterations to the scheme had been made to meet the concerns of interested parties and illustrate a desire to reach a consensus. The approach of the appellants had not been unreasonable. They had consistently tried to discuss the proposal with the Council which had not been willing to enter into a dialogue on this matter. Finally although he is no longer a member of the RIBA Mr Thomson is a registered architect.

5 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 appeal irrespective of its outcome. Costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

6 I consider that the relevant part of the Circular in dealing with the Council's application is paragraphs 1-6 in Annex 3. In particular I note that paragraph 3 makes clear that an applicant will risk an award of the authority's costs against him if he pursues the appeal to an inquiry but is unable to produce substantial evidence to support the contention that there are material considerations which would justify an exception to the policies in the development plan.

7 In my opinion the allocation of the appeal site as Metropolitan Open Land and as Private Open Space both in the Borough Plan and the UDP should have caused the appellants to consider whether an appeal was likely to succeed and if substantial evidence could be produced to support their case. Although the appellants did not want an inquiry I consider that this was necessary in view of the considerable public interest in the scheme. In my view the case put forward at the inquiry on behalf of the appellants was not substantial and largely rested on a misunderstanding of planning law. Nevertheless as the strength of the Council's case may reasonably have not been recognised until the passing of the Council's resolution setting out its suggested reasons for refusal I do not consider that a full award of costs is appropriate.

8 However I share your view that if the appellants had taken the appropriate professional advice at that stage they would have withdrawn the appeal. In my opinion the failure to take this course of action amounts to unreasonable behaviour. Moreover it has resulted in the need for the Council to incur the unnecessary expense of preparing for and holding the inquiry. Accordingly while I reject your application for a full award of costs I have concluded that your application for a partial award of costs is justified.

9 In my view the award should be linked to those costs incurred in the period starting on 11th October 1997 I have taken this date as it is one month after the passing of the Council's resolution, which would be a reasonable period in which appropriate professional advice could have been sought

FORMAL DECISION

10 Accordingly in exercise of my powers under Section 250(5) of the Local Government Act 1972 and paragraph 6(4) of Schedule 6 to the Town and Country Planning Act 1990 and all other enabling powers I HEREBY ORDER that C & P Abbott M Biddall V Miller and Vale Amusements North shall pay to the Council of the London Borough of Camden the costs of the proceedings of this inquiry limited to those costs incurred from 11th October 1997 such costs to be taxed in default of agreement as to the amount thereof The subject of the proceedings was an appeal under Section 78 of the Act of 1990 against a refusal of planning permission by Council of the London Borough of Camden for 15 appartement residential units with ancillary basement car parking and the creation of an area of public open space

11 You are now invited to submit to C & P Abbott, M Biddall V Miller and Vale Amusements North 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 A copy of the guidance note on taxation procedure referred to in paragraph 5 of Annex 5 to Circular 8/93 is enclosed

Yours faithfully



DENNIS BRADLEY BSc (Econ) DipTP MRTPI
Inspector

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