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## Costs Decision

Site visit made on 16 February 2015

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 16 March 2015**

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### **Costs application in relation to Appeal Ref: APP/X5210/C/14/2219114 Wildwood Lodge, 9 North End, London NW3 7HH**

- The application is made under the Town and Country Planning Act 1990, and Schedule 63, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr A Dodi for a partial award of costs against the London Borough of Camden.
  - The appeal was against the issuing of an enforcement notice relating to alleged unauthorised works at the above address. The alleged breach was worded as follows: *'excavation of additional basement accommodation, plus an external staircase and opening to rear garden as a rear extension to the existing and approved basements under the house'*.
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### **Decision**

1. The application for a partial award of costs is refused.

### **Reasons**

2. On behalf of the Appellant, Costs Circular 03/2009 is referred to. However, this has been superseded by guidance in Planning Practice Guidance (PPG). This states 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 in the appeal process. The partial costs application has been made in a timely manner.
3. In paragraph 048 of PPG (ID: 16-048-2014036) it is stated that: *For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.* This is similar to the superceded paragraph B12 of Circular 03/2009 quoted in the Applicant's cost claim.
4. There were three other associated appeals linked to this enforcement appeal. However, the partial costs application is made only on the basis that the Planning Enforcement Notice should not have been issued.
5. In support of the application it is contended that the second part of the allegation, the link into the garden, has not occurred as a matter of fact. It was therefore unreasonable of the Council to issue the notice against something that does not exist and which they were apprised of in February 2014. It is further argued that the basement excavation works comprised permitted development and therefore that it was equally unreasonable to enforce against something which complied with the Planning Act.

6. It is also considered that the Council acted unreasonably in moving so quickly to enforcement action without allowing the opportunity to appeal against the other decisions.
7. In response the Council indicates that the works as carried out constitute engineering works and that there is no permission in place for the works. Engineering works are not permitted under this part of the GPDO. In any case it is stressed that the Appellants clearly understood the need to apply for planning permission for the enlarged basement and did so. With regard to the staircase works, the photograph taken at the officer site visit clearly shows the opening and the staircase excavation. This had been covered at a later visit. Unauthorised works had been carried out and it is contended that the Council did not act unreasonably and that a partial award of costs is not justified.
8. Having considered all aspects of this claim I do not consider that it was unreasonable for the Council to have issued the enforcement notice in relation to the basement excavation works. For the reasons set out in my decision on the other appeals I do not consider that these works constituted permitted development. There is no permission in place for these engineering works and it must follow that they are unauthorised. In the overall circumstances the Council was entitled, in my view, to consider it expedient to issue the notice.
9. I do not consider that it was unreasonable for them to have acted so swiftly in taking action. Having inspected the works it was clear that significant changes had been made to the approved scheme and the Council had already refused planning permission and listed building consent for the variation of condition 7 and listed building consent for the other works. There is no onus on an authority to hold back on the issuing of a notice or notices whilst appeals are made against refusals for permission or consent.
10. With regard to the staircase and the opening to the garden, it is evident that that works were carried out at some time. The Council's photographic evidence shows the opening in the basement wall, the lintel and the staircase opening up to the terrace. The works had clearly been carried out as demonstrated by the now built-up opening and lintel in the position of the originally intended staircase. I accept that the situation on 14 February 2014 could have been clearer and in that case it might not have been necessary to include reference to those in the notice.
11. However, even if it was unreasonable of the Council to have included this element of works in the notice, with regard to any expense for the Appellant, I fail to see what loss and expense was caused by simply having to indicate that the staircase up to the garden had not been built. The four appeals were inextricably linked and it seems to me that the main expense would have been the formulation of this partial costs claim.
12. In conclusion, therefore, I do not consider that it has been conclusively shown that any unreasonable behaviour on the part of the Council, led to unnecessary loss and expense in the appeal process relating to the issuing of this enforcement notice. The application for a partial award of costs, therefore, fails.

*Anthony J Wharton*

Inspector