![The Planning Inspectorate]

Costs Decision

Site visit made on 17 November 2015

by Mr C J Tivey BSc (Hons) BPl MRTPI

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

Decision date: 11 January 2016

Costs application in relation to Appeal Ref: APP/X5210/W/15/3130914
Land at 280 Kilburn High Road, London NW6 2BY

- 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 *Zapper Limited* for a full award of costs against the London Borough of Camden Council.
- The appeal was made against the refusal of planning permission for the construction of roof extension to provide a 2 bedroom 3 person duplex on third and fourth floors with third floor terrace. A second floor extension to provide an enlarged 1 bed 2 person flat. New commercial kitchen extract and ventilation plant on the rear ground floor roof and rear elevation to replace the existing ad-hoc installation.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. It also states that the aim of the costs regime is to, amongst other things, encourage local planning authorities to properly exercise their Development Management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay.

3. Local Planning Authorities are required to behave reasonably in relation to procedural matters at the appeal and examples of unreasonable behaviour include a lack of cooperation with the other party. Furthermore, the PPG goes on to state that if it clear that the Local Planning Authority (LPA) will fail to determine an application within the time limits, it should give the applicant a proper explanation.

4. The applicant states that the award of costs is made on both procedural and substantive grounds, who consider that the Council prevented or delayed development which should have been permitted. I understand the applicant's frustration with regard to the length of time that it took for the Council to

determine the application from validation, and note that they were in the process of submitting an appeal against the Council's non-determination of the planning application, before the decision notice was issued. The applicant states that the LPA did not provide any communication as to why the decision was delayed and did not give a clear indication as to when it would be issued. In response to this the Council states that application was not straightforward and introduced new issues following the dismissal of the earlier appeal. Further, as highlighted by the Council, no indication was given by the applicant that they were intending to submit an appeal against non-determination.

5. I acknowledge that within the email dated 20 March 2015 from the Council's Officer to the applicant's agent, that the view expressed then was that the only issue was the roof extension and not the other items the subject of the appeal i.e. the third floor roof terrace and second floor extension. However, in the determination of any planning application an Officer's informal advice cannot bind a LPA to making a particular decision. Therefore, whilst I quite clearly understand that this could have come as a surprise to the applicant, by virtue of the fact that I have found the scheme to be unacceptable, I consider that the applicant was not subjected to unnecessary expense in pursuing their proposal through the appeal process.

6. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated. And for the reasons given above, I refuse the application for an award of costs.

C J Tivey

INSPECTOR