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## Costs Decision

Site visit made on 14 December 2015

**by George Arrowsmith BA, MCD, MRTPI**

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

**Decision date: 3 February 2016**

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### **Costs application in relation to Appeal Ref: APP/X5210/W/15/3133949 Carob Tree, Highgate Road, London, NW5 1QX**

- 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 Fruition Assets Ltd for a full award of costs against the Council of the London Borough of Camden.
  - The appeal was made against the refusal to grant approval to details required by conditions of a planning permission for change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2X2 and 1X3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation).
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#### **Decision**

1. The application for an award of costs is allowed in part in the terms set out below.

#### **Reasons**

2. The Government's Planning Practice Guidance advises that 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.
  3. The appellant argues that the Council have behaved unreasonably by ignoring relevant aspects of previous appeal decision and by raising concerns in their appeal statement that have not been referred to in the reasons for refusal. I will consider these matters in turn.
  4. In considering several previous appeals an Inspector concluded that waste and cycle storage facilities in the same position as those now proposed were broadly satisfactory. He nevertheless considered that the proposals were not entirely acceptable and dismissed the relevant appeals on the grounds that the facilities proposed did not include a cover for the cycles and that the submitted details did not provide sufficient detail of the proposed landscaping, a timetable for its implementation or a scheme for securing its retention and replacement if necessary.
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5. The officer's report of the current application suggests that the technical acceptability of the cycle storage arrangements was not adequately pursued in the previous appeals, with the implication that the Inspector might have taken a different view if he had had more information. Whilst this assessment can be questioned it is not at face value unreasonable. I have also been provided with the plans showing the cycle storage details provided with the earlier appeals and, as I note in my decision letter on the appeal itself, the detailed cycle storage arrangements shown are different from those now proposed. The cycles shown on those earlier drawings are stored in a configuration different from that now proposed and, importantly, are shown to be shorter than those in the current drawings. In itself this change justifies the Council reaching a conclusion that is superficially at least different from that reached by my colleague.
6. The Council make the further relevant point that, unlike the proposals in the previous appeals, the cycle storage now proposed includes secure storage containers which, it might reasonably be supposed, would make it less convenient to manoeuvre the cycles into and out from the storage spaces
7. I conclude that in relation to the adequacy of the cycle storage spaces the Council have not behaved unreasonably.
8. I have more substantial reservations about the Council's behaviour in relation to the landscaping issue. In this case the appellant has addressed the Inspector's reasons for dismissing the earlier appeals. A detailed landscaping scheme has been produced and alternative mechanisms for securing its implementation and maintenance have been proposed. The Council have actually accepted that one of these mechanisms, the Deed of Variation, is an appropriate vehicle. The alternative mechanism, which was offered as part of the application, is a Unilateral Undertaking. The officer's report said that such an undertaking was not possible through this type of application. The report identified a Deed of Variation as a possible alternative but I have no evidence that this was put to the appellant. Since the appellant was clearly willing to enter into an agreement and since an appropriate mechanism was available, I consider that the Council's behaviour was in this respect unreasonable.
9. The Council's only substantive objection to the landscaping proposals is that they would be inadequate to screen the larger storage structure that the Council consider is required. Since no such larger structure is proposed I consider that the objection is not relevant to the appeal before me and that the Council's stance in this regard is unreasonable. Their only other issues about landscaping are that 4 trees which have no direct relationship to the appeal proposal are not labelled, that a more solid wire is required to provide a frame for the proposed ivy screen and that the evergreen replacement cherry proposed would not provide a colourful spring flower display. The reasons for refusal did not contain any reference to deficiencies in the landscaping scheme, merely to the absence of a mechanism for implementation and maintenance. Whilst changes to the scheme could not have been achieved by condition I consider that the matters identified are so inconsequential that it was unreasonable for the Council to pursue their objection on these narrow grounds

10.I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Government's Planning Practice Guidance has been demonstrated and that a partial award of costs is justified.

**Costs Order**

11.In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Camden shall pay to Fruition Assets Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs relating to the second reason for refusal.

12.The applicant is now invited to submit to the Council of the London Borough of Camden to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*George Arrowsmith*

INSPECTOR