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## Costs Decision

Site visit made on 23 February 2016

**by Robert J Jackson BA MPhil DMS MRTPI MCMI**

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

**Decision date: 24 March 2016**

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### **Costs application in relation to Appeal Ref: APP/X5210/W/15/3130785 13 St Cross Street, London EC1N 8UB**

- 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 Alec Alexandrou, Alexander Developments Ltd for a full award of costs against the Council of the London Borough of Camden.
  - The appeal was against the refusal of planning permission described as for "erection of new build 7 storey plus basement building to provide eight self contained flats, 1 x 1 bedroom, 6 x 2 bedroom and 1 x 3 bedroom, on vacant land".
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### **Decision**

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

### **Reasons**

2. Paragraph 028 of the national Planning Practice Guidance (the PPG) states that parties in planning appeals and other planning proceedings normally meet their own expenses. However, paragraph 030 advises that costs may 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.
  3. The applicant was concerned about the delay over the making of the decision having submitted the application in 2011 and made amendments to it later that year, but the decision was only reached in 2015. He also considered the failure to determine the application in accordance with the amended plans that had been accepted, which led to reason for refusal 1, was unreasonable.
  4. Furthermore, the applicant also considered that the Council's refusal to accept further amended plans was unreasonable. He asserted that the second reason for refusal was only added at the end of the application process and was not a valid reason, particularly given the planning history of the site.
  5. Regarding the delay in determining the application the Council stated it understood the planning application was not being pursued by the applicant, but upon reviewing the situation, the application was taken through to determination. Once it was aware that the accepted amended plans had not been taken into account, it withdrew the first reason for refusal as quickly as possible. The Council also considered that it made a substantive case as to why workshops were needed to be incorporated within the development.
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6. Paragraph 033 of the PPG indicates that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. The failure to make a decision of itself is not unreasonable behaviour, although as paragraph 048 of the PPG makes clear the Council should have given the applicant a proper explanation for this delay.
7. It is a matter of judgement as to whether an amendment to a scheme takes it outside the parameters of an original application. In my view, the further amendments, when compared to the original scheme, significantly altered the effects of the development on neighbouring properties and the Council's rejection of these further amendments was therefore not unreasonable.
8. It is clear that the Council made an error in not taking into account the amended plans which it had accepted prior to determining the application. This should not have happened and represents unreasonable behaviour. That it sought to withdraw the first reason for refusal at the earliest opportunity in line with Paragraph 049 of the PPG does not absolve it of that. The applicant should not have been put to the cost of drawing up grounds of appeal to respond to that reason for refusal. I therefore conclude that unreasonable behaviour leading to the expenditure of unnecessary costs in respect of reason for refusal 1 did occur.
9. In respect of reason for refusal 2 the issues are different. That I concluded in weighing the issues that greater weight should be given to Policy DP1 of the Camden Development Policies, national policy and the Hatton Garden Conservation Area than to Policy CS8 of the Camden Core Strategy 2010 does not mean that the Council acted unreasonably in weighing matters differently. This involved matters of judgement and the Council satisfactorily explained its position. I therefore do not find that unreasonable behaviour leading to the expenditure of unnecessary costs in respect of reason for refusal 2 occurred.
10. The applicant considered that reasons for refusal 3 to 6 could have been resolved through a Planning Obligation rather than inclusion on the decision notice. However, by including them as reasons for refusal the Council protected its position to ensure that these issues were not overlooked and, in my view, this is a reasonable position to take. That I concluded that the issues could be satisfactorily dealt with by planning conditions does not mean that the Council's behaviour was unreasonable.

### **Conclusion**

11. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs in respect of reason for refusal 1 only is justified.

### **Costs Order**

12. 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 London Borough of Camden shall pay to Mr Alec Alexandrou, Alexander Developments Ltd the costs of the appeal proceedings described in the heading

of this decision limited to those costs incurred in seeking to defend reason for refusal 1 relating to the effect on living conditions.

13. The applicant is now invited to submit to 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.

*Robert J Jackson*

INSPECTOR