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## Costs Decision

Site visit made on 14 December 2016

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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

**Decision date: 17 February 2017**

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### **Costs application in relation to Appeal Ref: APP/X5210/W/16/3155248 Flat 1, April House, 45 Maresfield Gardens, London, NW3 5TE**

- 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 Kfir Chervinski for a full award of costs against the Council of the London Borough of Camden.
  - The appeal was against the refusal of the Council to grant planning permission for the installation of boundary treatment including means of access and hardstanding (Retrospective).
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### **Decision**

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

### **Preliminary matters**

2. The Council refused the application for two reasons, in effect, firstly inadequate sightlines and secondly loss of an on-street parking space. The Appellant's application is in two parts, firstly in relation to the s.106 agreement which he says is reason for refusal 1 and secondly in relation to the sightlines which he says is reasons for refusal 2. There appears to me to be an error in the numbering<sup>1</sup> by the Appellant but I will determine the application on the basis of what is submitted rather than the numbering of the reasons for refusal.

### **The application on behalf of Mr Chervinski – main points**

3. Mr Chervinski (the Appellant) made his application in writing. He submits, firstly that the Council acted unreasonably in being unwilling to consider or negotiate a s.106 agreement which he believes could have addressed the Council's concerns in relation to reason for refusal 1.
4. Secondly he submits that the Council mistakenly relied on outdated and obsolete guidance on sightlines when the proper application of current guidance does not support refusal on the basis of reason for refusal 2.
5. The unnecessary and wasted expenses were incurred in the preparation and submission of the appeal and supporting technical statements.

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<sup>1</sup> The Council also raises this point in its coverage of all aspects of the Appellant's application and has not, in my view, been prejudiced by this matter

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### **The response by the Council – main points**

6. The Council made its response in writing. It submits that it did not act unreasonably because the s.106 was not an option because it could not make the development acceptable. With regard to the second point, the Council maintains that Manual for Streets 2 was used in the determination of the application and that the diagram and specific calculation in DB32 were used as illustrations.
7. The Council notes that various transport reports and a survey of gates and driveways in the surrounding area were submitted in respect of different applications and the previous appeal made by the Appellant and that the only new report was the technical update submitted with the 2016 appeal.

### **Reply by Mr Chervinski – main points**

8. The Appellant notes that the Council has confirmed that a s.106 agreement would be accepted on a without prejudice basis if the appeal was allowed but the opportunity to negotiate has now passed. The Appellant requests an amendment of the amount payable from £3,500 to £5,180.97.
9. The Appellant confirms that the proposed limit on parking permits will be monitored by the owner/occupier and controlled by the agreement itself.
10. The offers of the charging bays and car club bays are in line with Council policy and The Camden Parking Places (Car Clubs) Traffic Order 2012 as amended. The Appellant maintains that the s.106 agreement is capable of addressing both reasons for refusal.

### **Reasons**

11. The 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<sup>2</sup>.
12. The Appellant made an application for planning permission in 2015<sup>3</sup> in similar terms to the application in this appeal. This previous application was refused and I can find no record of any appeal against the refusal although there was a successful appeal on ground (e) against an enforcement notice issued in July 2015<sup>4</sup> concerning a similar, if not the same, development. No s.106 agreement was provided with the 2015 application but a draft unilateral undertaking was submitted in November 2015 as part of the previous enforcement appeal. At that time the Council was of the opinion that the s.106 was unclear regarding the number of permits proposed to be restricted and said that it had no formal mechanism through its Parking Enforcement and Permit issuing service to administer checks when issuing a reduced number of permits to one individual property and therefore the s.106 was meaningless. The matter was not pursued possibly because the enforcement notice was quashed on appeal. If the appeal was allowed it would be a matter for the Council whether it chose to accept and enforce the terms of the s.106 agreement dependent on my findings in respect of the conditional clauses.

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<sup>2</sup> Paragraph 030

<sup>3</sup> Ref:2015/3684/P

<sup>4</sup> APP/X5210/C/15/3133473

13. The s.106 agreement in this appeal is dated 9 January 2017 and it has progressed through a number of drafts before reaching this final document. The Appellant among other things covenants to restrict car parking permits for the appeal property and provide contributions towards realigning the crossover into the northern parking space; realigning the adjacent parking bay; providing for a new or extended on-street resident parking bay in the vicinity; costs associated with any necessary revision of a Traffic Regulation Order; the provision of an on-street car club bay in the vicinity; and the provision of an on-street electric car charging point in the vicinity.
14. The Council advised in its appeal documents that it has no mechanism to partially restrict parking permits and that any suggestion that Traffic Management Orders could be amended was wholly unreasonable given the magnitude and cost of the task. In its response to this costs application it provides more detail, in particular that as the proposals include changes to the highway they are subject to assessment and consultation under the Highways Act 1980 and there could be no guarantee that the proposals could be implemented in any event. The Council has also provided in its response that the estimated cost of the highway works is £5,180.87 which is considerably in excess of the £3,500 offered by the Appellant for all the proposed works to the public highway. I have no powers to amend that amount as requested by the Appellant.
15. I found in my appeal decision that given the far ranging nature of the covenanted matters I was not persuaded that they were fairly or reasonably related to the scale and kind of development that had taken place and which was proposed. Whilst I have no reason to doubt that the Appellant would self-monitor the limit on parking permits any planning permission would run with the land and there is no guarantee who the owner/occupier might be in future. Any s.106 must be capable of enforcement by the Council and that would not be the case here.
16. In addition I found that the covenanted matters only addressed the question of the reduction of on-street parking and that more importantly in my mind they did not address the poor visibility and highway safety aspects that arose from the development. I have no reason to reach any different conclusion in this costs application and I do not consider that the Council acted unreasonably within the terms of the Planning Practice Guidance in not being willing to consider or negotiate a s.106 agreement with the Appellant.
17. With regard to the second point made by the Appellant, the Council's reason for refusal refers to 'inadequate sightlines' and does not cite any reference other than the appropriate policies. The Council fully addressed the guidance in Manual for Streets 2 in the delegated report in which the 2016 application was considered and also within the various documents submitted in the appeal.
18. In my decision I found, among other things, that the views of a driver exiting from either parking space at the appeal site, particularly in reverse and particularly from the northern space, would be significantly impeded by the bulk and mass of the central brick built piers. I therefore do not consider that the Council acted unreasonably in respect of reason for refusal 1.
19. The Appellant has been professionally represented throughout the appeal process and it is a matter for an Appellant, with the benefit of that professional advice, how he pursues his appeal and what documentation he submits. The

Council has to respond to the documentation provided. This resulted in a considerable amount of documentation, much of which was repetitious but all of which I have taken into account in my determination of this appeal.

**Conclusions**

20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Gloria McFarlane*

Inspector

**DOCUMENTS SUBMITTED IN THE COSTS APPLICATION**

Document 1 – Application by the Appellant

Document 2 – The Council’s response

Document 3 – The Appellant’s reply