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## Costs Decision

Inquiry held on 24, 25 & 26 January 2017

Site visit made on 25 January 2017

by **B M Campbell BA(Hons) MRTPI**

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

Decision date: 06 March 2017

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### Costs application in relation to Appeal Refs:

**APP/X5210/X/16/3148353 (Appeal A)**

**APP/X5210/X/16/3160682 (Appeal B)**

**APP/X5210/X/16/3165517 (Appeal C)**

**APP/X5210/X/16/3161902 (Appeal D)**

### Land at 15 Gayton Crescent, London NW3 1TT

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by the Council of the London Borough of Camden for a full award of cost against Mrs W Galway-Cooper.
  - The inquiry was in connection with four appeals against three refusals and one failure of the Council to issue a decision within the prescribed period on applications for certificates of lawful use or development for a rear extension (Appeals A, B and C) and the vertical extension of an existing WC extension (Appeal D).
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### Decision

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

### The submissions for the Council

2. The costs application was submitted in writing at the inquiry.
3. In relation to Appeals A and B, the application is made on procedural grounds. Appeal A could not succeed as there was an enforcement notice in force. This was pointed out to the Appellant in December and yet the Appellant continued to pursue the appeal. Appeal B too was doomed to fail since the Appellant was not the applicant and as such had no right of appeal.
4. In relation to Appeals C and D, the application is made on both procedural and substantive grounds. Firstly, there was clear evidence that the development at the rear of the property was one operation executed in phases. The suggestion that because the elements were built one after the other that that makes them separate developments was doomed to fail. Secondly, even if Appeals C and D succeeded any LDC issued could not be relied upon now because of the change of circumstances since the time of the applications.
5. Pursuing each of the appeals was unreasonable and has resulted in wasted expense for the Council.

### The response for Mrs Galway Cooper

6. The response was made orally at the inquiry.

7. That the Council brings this application for costs is not an attractive proposition since it seriously misled the Appellant in relation to what might be undertaken at the property as permitted development and without the need for express planning permission. It is unsurprising that she relied on the advice given by officers who then latterly changed their minds, quite possibly because of the considerable pressure being exerted by local residents.
8. The Appellant and her husband have spent a considerable amount of money securing the future of this attractive house in an important conservation area. Of course it is right that with the benefit of hindsight it should have been apparent that there were legal obstacles to what they wanted to achieve. However, the application is punitive and points to the Council having lost all sense of perspective in this case.
9. The Inspector is invited to stand back and look at the overall conduct of both parties; to find that it would be inappropriate to award costs and to find that the Council could have been more constructive in order to facilitate a compromise solution.

### **Reasons**

10. 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.

### **Appeal A**

11. This appeal had no prospect of success. Section 191(2) of the Act sets out when uses and operations are lawful and that includes "(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force". The Appellant was professionally represented when the appeal was made. The Agent must have been aware of the content of s191(2) since the onus would have been on him, acting for the Appellant, to demonstrate lawfulness within the meaning set out therein. It should have been obvious that s191(2)(b) could not be met. Moreover, this was pointed out by the Council in its letter of 15 June 2016 to which he responded. In addition, in December and following the resignation of the Agent, the Planning Inspectorate wrote a detailed letter again setting out why the appeal could not succeed.
12. To continue to pursue an application where it was clear that it had no chance of succeeding and where this had been pointed out was unreasonable and resulted in wasted expense for the Council in having to address it. A full award of the costs incurred in doing so is therefore justified.

### **Appeal B**

13. This appeal was not validly made as the only person with the right of appeal was the applicant and not the Appellant. That no further action would be taken on it was inevitable. It might be argued that the planning Agent should have known. However, none of the parties involved, including the Council, picked up this error until the Planning Inspectorate did so. Even then that was only the week before the inquiry opened and after the date for submission of evidence had passed.

14. This case differs from Appeal A as here I consider that all parties were equally in ignorance of the limitation on the right to appeal and the Appellant was not warned until late in the day. It would be harsh indeed to penalise the Appellant for something of which he was unaware when the Council was equally as unaware. Whilst it might be argued that the Appellant could have withdrawn the appeal once the Inspectorate's letter was received, little would have been gained by doing so given that the inquiry was about to open and that the letter indicated that the appeal could not proceed as made. No inquiry time was wasted on it other than to confirm that it was invalid.
15. Whilst there was wasted expense in preparing for this appeal, that arose from ignorance of procedure (of which the Council could be said to have been equally guilty) and not as a result of unreasonable behaviour. Thus an award of costs is not justified.

### ***Appeals C and D***

16. Section 195 of the Act sets out the right of appeal against refusal or failure to determine applications for LDCs. There is no requirement to give reasons for exercising that right. The Appellant explained why she wished to proceed with the appeals even though, had she been successful and LDCs issued, circumstances had changed since. I find no unreasonable behaviour in exercising the right to appeal in itself.
17. In terms of substantiating the appeals, however, I do find that the Appellant acted unreasonably. In both cases, success was incumbent upon demonstrating that there had been three separate and discrete building operations undertaken to extend the rear of the property. All that could be said in support of that proposition was that the work had been undertaken in three stages – but that was a method of working necessarily introduced to maintain the stability of the building and not because three separate developments had been carried out. No evidence of substance was brought to support the Appellant's case.
18. For that reason I find the Appellant's behaviour to have been unreasonable in pursuing these two appeals which has resulted in wasted expense for the Council in having to address them. A full award of costs is justified.

### ***Other matters***

19. I have noted the suggestion made by the Appellant's Advocate in response to this application and in closing submissions on the appeals that I might comment on the sorry planning history of this site and the appropriate way forward to a resolution. However, I would be unwise to do so given that criminal proceedings are pending and that my remit is limited – in the appeals to determining whether the Council's decisions were well founded; and in this application to whether there has been unreasonable behaviour on the part of the Appellant which has led the Council to incur wasted expense.

### ***Costs Order***

20. 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 Mrs W Galway-Cooper shall pay to the Council of the London Borough of

Camden, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing Appeals A, C and D; such costs to be assessed in the Senior Courts Costs Office if not agreed.

21. The applicant is now invited to submit to Mrs Galway-Cooper, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*B M Campbell*

Inspector

#### DOCUMENTS

- A Costs application from the Council