The Planning Inspectorate

Costs Decision

Inquiry held on 9 August & 18 September2017

Site visit made on 19 September 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 26 October 2017

Costs application in relation to Appeal Ref: APP/X5210/C/16/3163207
84 Parkway, London NW1 7AN

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the London Borough of Camden for a full award of costs against Mr Leo Kaufman.
- The inquiry was in connection with an appeal against an enforcement notice alleging the installation of a water tank on the roof.

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 made orally at the inquiry. Shortly put, the Council's application is made on two grounds:

3. In the first, the Council seeks an award of partial costs arising from the very late withdrawal of the appeal on grounds (c) and (e). The work undertaken by the Council up until those grounds were withdrawn was abortive and thus incurred wasted expense.

4. Secondly the Council seeks its full costs on grounds of the substance of the Appellant's case. The government's Planning Practice Guidance (PPG) on costs in the section dealing with appeals is clear that the appellant is at risk of costs where *the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not changed in the intervening period*. That is precisely the case here where the exact same development has previously been considered and dismissed on appeal.

5. On day one the Inspector asked which of the Appellant's examples of other development should be looked at and a list of some 18 properties was produced. But in the event only five were relied on in cross examination of the Council's witness so that, in the event, a great deal of unnecessary additional work had been done to address them all.

The response for Mr Kaufman

6. The response was made orally at the inquiry. In brief the response to the two grounds is:

7. Although ground (c) was initially brought, no argument relevant to it was ever developed and it is clear that the Council did nothing to address it in preparation for the inquiry. As it wasn't relevant to the matters which concerned the Appellant, it was sensibly withdrawn at the opening. Ground (e) was only withdrawn to save inquiry time and because attention was drawn by the Inspector to the need to demonstrate substantial prejudice.[1] The Appellant remains of the view that the notice was not properly served.

8. On the matter of substance, the enforcement notice was issued before the outcome of the s78 appeal addressing the same matter was known and the Appellant had to lodge an appeal, therefore, to prevent the notice from coming into effect. No effort was made by the Council to see if the matter could be resolved despite an assurance to that effect. Once the s78 appeal decision had been made it was perfectly reasonable for the Appellant to continue with the enforcement appeal since he had not previously been able to pursue his points about inconsistent decision making by the Council and the importance of maintaining the water supply.

9. The Appellant does not understand why it was unreasonable to produce the list of other example properties. Whilst the Council's witness was examined at some length on five properties where more detail was available, the witness was also taken through the schedule he had produced in response to the full list.

Reasons

10. The PPG 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.

11. The circumstances of this appeal are that it relates to exactly the same development as that considered and found to be unacceptable in the 2016 appeal decision.[2] In addition there has been no change in circumstances in the intervening period. This case thus exactly fits the example given at paragraph 5 above where an appellant is at risk of an award of costs. Once the 2016 decision was made the Appellant should have been made aware that his appeal against the enforcement notice was unlikely to succeed.

12. It is no answer to say the Appellant had been prevented from showing the 2016 Inspector around the area to point out other examples of harmful development. The appeal decision in 2015[3] made clear that "the presence of similarly harmful extensions in the vicinity cannot be justification to allow yet another inappropriate scheme". The Appellant should have taken that comment on board.

13. From the layman's point of view, I can understand the Appellant's frustration in not being granted permission for his development when he could point to other examples of harmful development nearby. However, that attitude disregards the comment made by the Inspector in the 2015 appeal decision in relation to such matters. In addition, the Appellant was represented by a professional planning consultant from the outset who should have been aware that the appeal on ground (a) would be decided having regard to the particular

[1] S176(5) of the Act.
[2] Ref: APP/X5210/W/16/3154638
[3] Ref: APP/X5210/C/14/2215256/7

circumstances of the case and on its own particular merits. He would have known that the presence of harmful development elsewhere would not justify a grant of permission here and would have been in a position to advise his client accordingly.

14. The Appellant was further given every opportunity at the inquiry and on the site visit to demonstrate that this form of development on townhouses such as the appeal property was so widespread and accepted that it had now become a characteristic feature of the conservation area. That would have been a relevant consideration weighing in favour of a grant of permission. But he failed to do so, adopting instead a scattergun approach drawing attention to many buildings and developments which were far from comparable with the appeal building and the tank atop of it.[4] Rather the evidence led me to conclude that the roofs of similar buildings were, in the main, free from such additions.

15. With regard to the Council's apparent inconsistency of approach, this too was not made out – no identical case, comparable in all respects, was identified. It could not, in any event, have been sufficient to justify reaching a different conclusion from the previous Inspector when our findings were the same. Nor could it have justified development which, in itself, harms the character and appearance of the conservation area and is in conflict with the provisions of the Development Plan.

16. I do not accept that the previous appeal Inspector did not have in mind the quite obvious need for there to be a water supply to the building. Indeed he touched upon supply in paragraph 16 of his decision.

17. The list of 18 properties came in response to a request from me as to which properties the Appellant wanted me to look at during the site visit and so I do not criticise him for producing it.

18. With regard to the late withdrawal of grounds (c) and (e), clearly any work undertaken by the Council to address these ground was wasted. Ground (c) should never have been brought as no relevant argument was ever made in respect of it. It is no answer to say that the Appellant still felt that he had a case that he could have made on ground (e). He withdrew it. Withdrawing the grounds so late in the day was unreasonable and resulted in wasted expense on the part of the Council.

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

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 Mr Leo Kaufman shall pay to the Council of the London Borough of Camden, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

[4] For example Greater London House

21. The applicant is now invited to submit to Mr Leo Kaufman, 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