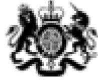 The Planning Inspectorate

# 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 Mr Leo Kaufman for a full award of costs against the Council of the London Borough of Camden.
- 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 cost is refused.

### The submissions for Mr Kaufman

2. The costs application was made orally at the inquiry. Reference is made to the government's Planning Practice Guidance (PPG) and in particular the section on costs in that part dealing with appeals which points out that a local planning authority is at risk of an award of costs where it does not determine similar cases in a consistent manner.

3. The major concern of the Appellant has been that his development has not been handled by the Council in a manner consistent with plant and equipment located on other roofs in the area and in particular where they are not materially visible from the public highway. There are also many others that are visible where nothing has been done.

4. For this appeal, the Council's witness did no more than interrogate office records for each property on the Appellant's list of examples rather than investigating these other developments in more detail. When looking at the stance taken with development elsewhere in the conservation area it is clear that the Appellant has not been dealt with fairly.

5. The Council should not have issued an enforcement notice with a s78 appeal pending relating to that very same development and when it had indicated that it would be in contact to see if the matter could be resolved.

### The response by the Council

6. The Council has not been shown to be inconsistent in its actions. Looking at the examples on the list the Appellant relied on, it was established that some developments had been found to be immune from enforcement through the passage of time, one on a Council owned property was to be removed in any

event, others had been assigned enforcement reference numbers indicating that they were being investigated and others were awaiting investigation.

7. With regard to the five properties that the Council's witness was taken to in detail in cross examination, these are distinguishable using planning judgement. Whether the appeal is allowed or dismissed it is not unreasonable for the Council to distinguish cases as a matter of planning judgement.

8. The decision to issue an enforcement notice is not relevant to the planning merits of this appeal. Moreover it is hardly unreasonable for the Council to oppose this appeal when there is an appeal decision dismissing the exact same development. Indeed, for the Council to have taken the opposite stance to the 2016 appeal Inspector would have been unreasonable.

**Reasons**

9. 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.

10. The Appellant's claim that the Council has been inconsistent in the way it has dealt with development has been addressed by me in the appeal decision against the enforcement notice. I found the claim to be unsubstantiated. It follows, therefore, that I find no unreasonable behaviour on the part of the Council in this respect.

11. There is no reason why a Council should not issue an enforcement notice before the outcome of a s78 appeal against the refusal of planning permission. Indeed it is often the case that a notice is issued immediately after permission is refused. Whilst I can quite understand that the Appellant would wish to appeal against it; had the s78 appeal subsequently been allowed the notice would have ceased to have effect[1]; and if (as it was) the appeal was dismissed, the Appellant had the option of withdrawing his outstanding appeal against the notice.

12. I do not know why the Council did not contact the Appellant to see if the matter could be resolved as it had indicated it would. That might be said to have been unreasonable. However, given the respective positions of the two parties in this matter, I have no doubt that there was no middle ground. Thus the Council's inaction did not result in wasted expense for the Appellant, determined as he was to pursue the appeal even in the face of the outcome of the s78 appeal.

13. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense for the Appellant, as described in the Planning Practice Guidance, has not been demonstrated. The application fails.

*B M Campbell*

Inspector

[1] S180 of the Act