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## Costs Decision

Site visit made on 10 October 2018

**by G J Fort BA PGDip LLM MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 November 2018**

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### **Costs application in relation to Appeal Ref: APP/X5210/W/18/3202412 3 Kidderpore Avenue, London NW3 7SX**

- 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 Shrags Michelson for a full award of costs against the Council of the London Borough of Camden.
  - The appeal was against the refusal of planning permission for the demolition of existing 19<sup>th</sup> century building and erection of a 3-storey traditional dwellinghouse in place.
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### **Decision**

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

### **Reasons**

#### *Background*

2. The Planning Practice Guidance (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. The applicant has brought a claim for full costs on both procedural and substantive grounds.
3. On procedural grounds firstly, the applicant has concerns about the length of time it took the Council to determine the application and alleges that the Council was uncooperative during that period; and secondly, alleges that the Council's withdrawal of reasons for refusal (RfR) was unreasonable.
4. On substantive grounds, the applicant alleges firstly, that the Council failed to produce evidence to substantiate each RfR on appeal, with only vague, generalised and inaccurate assertions about the proposal's impact, unsupported by objective analysis; secondly, that planning permission was refused on the basis of grounds capable of being dealt with by conditions; and finally, that the Council required the applicant to enter into a planning obligation which does not accord with the law or relevant national planning policy.

#### *Length of time to determine and co-operation*

5. The appeal scheme took a considerable time to determine- and I note that there were personnel changes at the Council which may have resulted in this. This is unfortunate perhaps, but not unreasonable, and I have nothing before

me to suggest that the applicant could not have progressed an appeal against non-determination.

6. Moreover, I note correspondence supplied by the Council advising that the application was likely to be refused, but offering further discussions with the applicant. This offer does not appear to have been taken up, and I note that the applicant's representatives advised the Council to continue with the determination of the application as presented. I find nothing inherently unreasonable in the Council's approach here, or that a differing approach on their part would have avoided the necessity of progressing an appeal.

#### *Withdrawal of Reasons for Refusal*

7. At appeal stage the Council withdrew the RfR relating to the principle of demolition of 3 Kidderpore Avenue, a residential building within the Redington/Frognaal Conservation Area; and part of the RfR which dealt with the effects of the proposed development on the living conditions of the occupants of 5 Kidderpore Avenue, insofar as it related to sunlight and daylight matters.
8. It was clear at the time of the Officer Report that the Council's Conservation Area Statement, in its written narrative appears to describe 5 Kidderpore Avenue in its description of No 3. Nevertheless, the Officer Report acknowledges this drafting error, yet still assesses the merits of the appeal building. Whilst I note the Officer Report's conclusions on the contribution of the appeal property are divergent from both those of the Council's conservation officer and the appellant, they are nevertheless based on an appraisal of the qualities of the building and I am also mindful of comments from interested parties regarding No 3's contribution to the Conservation Area. Consequently, based on the contents of the Officer Report, the assessment of the existing building's merits are clearly matters of planning judgement and as a consequence I see no unreasonable behaviour on the Council's part at that point.
9. Nevertheless, the Council re-appraised the contribution of No 3 at the appeal stage on the basis of material relating to it in the applicant's appeal statement and this led to the withdrawal of the RfR. As it followed the submission of further evidence regarding No 3 by the applicant at the appeal stage I consider that the Council did not act unreasonably in withdrawing this RfR when it did. In any event, the applicant's assessment of the contribution of No 3 informs their case on whether the proposed development would preserve or enhance the Conservation Area- and therefore to my mind the production of the evidence related to No 3 has not therefore involved unnecessary or wasted expense. I note also that a difference of opinion remained between the Council and the appellant at the appeal statement stage on whether No 3 has a *neutral* or a *negative* effect on the area's character and appearance, which is clearly a matter of planning judgement.
10. Whilst the applicant's *Daylight and Sunlight to Neighbouring Properties*<sup>1</sup> report (the Report) is dated September 2016, it does not appear on the list of documents recorded on the Decision Notice, and the Council advises that it has no record of its receipt during the determination of the application. Whilst I acknowledge the applicant's assertion that this material was submitted during the determination of the application that led to the appeal, no documentary

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<sup>1</sup> Produced by Brook Vincent + Partners

evidence of this has been provided. Once again, an assessment of this material at the appeal stage, the first time the Council claims to have seen it, led to a partial withdrawal of one of the RfRs. On balance, based on the evidence before me, I consider that this was reasonable course of action for the Council to take. Moreover, as the applicant's appeal statement regarding daylight and sunlight aspects of the case more or less amounts to one paragraph, which merely refers to the report and its conclusions, I consider that no unnecessary or wasted expense has occurred in relation to this matter in any event. As the Council's objection to the proposed development in terms of outlook and enclosure, expressed in the Officer Report, RfR and articulated in its Appeal Statement still endured at the appeal stage, I consider that it has not been demonstrated that the existence of the Report also addresses that part of the RfR.

11. Following the withdrawal of the RfRs legitimate differences of opinion between the parties remained on aspects of the case including whether the proposed development would preserve or enhance the character or appearance of the Conservation Area, and its effects on the living conditions of the occupants of No 5. Consequently, it has not been established that the appeal could have been avoided altogether.

#### *Remaining Reasons for Refusal*

12. In terms of the RfR related to the effects of the proposed development on the character and appearance of the Conservation Area, the Council both at the application and appeal stages clearly articulated its objections to the scheme in terms of the overall scale and massing of the proposal, its relationship with its plot, elevational treatment and so forth. I readily accept that an assessment of this type is to some extent subjective, nevertheless I consider that these are legitimately expressed matters of planning judgement, and thus not vague, inaccurate, unsubstantiated reasons; or that there is a lack evidence to support the RfR.
13. I note the applicant's use of the Historic England document *Conservation Area Designation-Appraisal and Historic Management* in their assessment of the existing building at the appeal site and their views on the objectivity of that approach. I also have taken into account their comment that changes in personnel at the Council led to changes in subjective judgements related to the appeal scheme. Nevertheless from the correspondence submitted it appears that matters of scale and mass were always of concern to the Council, as was the height of the roof adjacent to No 5, and the detailing of the element of the building where the submitted plans show external stairs.
14. The RfR related to the living conditions of the occupants of No 5 was based on an analysis of the scale, depth and proximity of the proposed wall adjacent to that property, and the proportions of that adjacent property's garden. These are all clearly expressed considerations that support the RfR.
15. Consequently, in terms of both of these RfRs I find that the Council did not make vague, generalised or inaccurate assertions about the proposal's impact, unsupported by objective analysis, or that it failed to produce evidence to substantiate each RfR on appeal. I therefore find no unreasonable behaviour on the part of the council in relation to these matters.

*Refusal on grounds capable of being handled by conditions*

16. One of the RfRs relates to bicycle parking. At the appeal stage the Council acknowledged that whilst it would prefer to get details of this matter at application stage it would nevertheless be an aspect of the proposal that could be controlled by condition. I consider that in this respect the Council's behaviour was unreasonable. However, the applicant's Appeal Statement does not explicitly address bicycle parking, and no additional evidence was submitted by the applicant in respect of this matter prior to the Council clarifying its position within its statement. Moreover, as the RfR is only one of several, it has not been demonstrated that a differing view on this matter at application stage would have led to a different overall conclusion on the planning merits of the scheme by the Council, or that an appeal could have been avoided as a result. I therefore find that no unnecessary or wasted expense has resulted from this action.
17. Another RfR was based on the proposed development's failure to meet the development plan's carbon emissions policies. I note that the applicant was unaware of these requirements prior to the Decision Notice, nevertheless they relate to clearly expressed policies of the development plan. Furthermore, I accept that as the deployment of renewable energy technologies within a development could influence its character, design and its amenity effects, amongst other things, that it is reasonable to assess these matters at the application stage. As the applicant's *Energy and Sustainability-Revision 1*<sup>2</sup> document was not submitted until the appeal stage, it has not been established that this RfR could have been addressed by the imposition of conditions at the application stage.

*Planning Obligation*

18. The Council required a construction management plan, and a related monitoring fee to be secured by way of a planning obligation. The applicant submitted a list of conditions used by the Planning Inspectorate, including one related to construction management plans. However, unlike the construction management plan sought by the Council in this case, which the *Camden Planning Guidance Document: Amenity* (adopted March 2018) states "should set out the measures that a contractor will take, both on-site and off-site" (my emphasis) the condition drawn to my attention by the applicant does not explicitly seek to control matters outside of an appeal site. Taken together with the requirement for a monitoring fee in respect of a construction management plan in this case, I consider that it has not been demonstrated that an obligation would be unnecessary or for that the matter could be secured by condition. I therefore find no unreasonable behaviour on the part of the Council in relation to this matter.
19. In relation to highway maintenance and car-free development matters, financial transactions would be required, and in terms of car parking permits, the personal rights of occupants of the proposed development would be affected. Consequently, these are generally matters secured by agreements, including those made under the auspices of Section 16 of the Greater London Council (General Powers) Act 1974, rather than planning conditions. However, in my appeal decision in relation to this case, based on its specific circumstances, I have found the obligations in respect of car-parking and

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<sup>2</sup> Dated 13 April 2018

highway maintenance measures to be unnecessary and that they would thus not meet the with relevant statutory and policy tests. Nevertheless I reached these findings on the basis of evidence submitted with the applicant's final comments and it has not been demonstrated that the Council was aware of these matters prior to this stage. In any event, the appeal process provides a forum for the resolution of the parties' disagreements in relation to these matters.

20. These considerations, taken together, lead me to the view that the Council did not act in an unreasonable manner in terms of the planning obligation.

*Conclusion*

21. For the reasons set out above, and taking into account all other matters raised, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for costs fails.

*G J Fort*

INSPECTOR