



## Costs Decision

Inquiry Held on 4 and 5 June 2019

Site visit made on 5 June 2019

**by Andy Harwood CMS MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 20 August 2019**

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### **Costs application in relation to Appeal Ref: APP/X5210/C/18/3203085 Land at 1a Highgate Road, London NW5 1JY**

- 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 Jon Curtis of IDM Land Ltd 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 construction of a residential development providing 13 units.
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### **Decision**

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

### **Preliminary Matters**

2. This cost application and further comments on it by both parties were received in writing following the issue of my enforcement appeal decision. At the appeal inquiry, although the parties had not raised this matter, I asked questions regarding the validity of the notice. In my appeal decision, I found that the notice was flawed, incapable of being corrected without causing injustice and therefore invalid. Given the circumstances, this application has been accepted as an exception to the normal requirement to apply for costs before the closure of the inquiry.

### **Reasons**

3. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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 PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice. Unreasonable behaviour may relate to either procedural matters or substantive issues relating to the merits of the appeal.
4. The applicant is of the view that had the Council carried out a more thorough investigation, it would have been obvious that an enforcement notice in the form issued could not and should not have been issued. The PPG emphasises in relation to enforcement action that local planning authorities must carry out adequate prior investigation and will be at risk of an award of costs if it is

concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice or ensure that it was accurate. Effective enforcement action relies on accurate information about an alleged breach of planning control.

5. The Council's planning witness had mentioned within his proof of evidence (paragraph 5.22) that the notice was issued before residential occupation of the appeal site could take place. I therefore sought clarification about this matter in opening. It was confirmed that there was no use or ability to use the building residentially and that was very clear when I visited the site. I adjourned twice during my opening of the inquiry in order that both parties could carefully consider the implications of these facts. Neither party accepted the significance of the matter.
6. The facts appear to have been clear although the enforcement notice procedures have been mis-applied to those facts when issuing an invalid notice. At the inquiry both parties referred to various legal cases and my decision also cites an authority that was mentioned. The PPG confirms that local planning authorities are at risk of an award of costs if they act contrary to or do not follow well-established case law. The issuing of the notice in this invalid form was unreasonable.
7. It is not clear why the consequences of the way the notice was framed were not apparent or raised by the applicant's professional team before the inquiry. Had the matter been challenged, the Council may have reconsidered their position. However, there is no obligation upon the applicant to do so. The applicant had very little option but to submit an appeal. From that point, the unreasonable behaviour was incurring costs for him. The appellant employed consultants to deal with the matter when the enforcement notice was issued and then instructed counsel.
8. I sought the views at the inquiry about the problems with the notice but neither party considered that this was a matter for me to deal with in the absence of a ground (b) appeal. That was despite me making it clear that I had a duty to ensure that the notice was in order. The Council did not wish to withdraw the notice although acknowledged the problem. The applicant also wished to continue with the appeal and for me to consider the evidence.
9. Neither main party therefore recognised or conceded the significance of the problem. The Council had an opportunity to review its case and withdraw the notice once their attention had been drawn by me to it. Costs had clearly already been incurred by the applicant by then. The Council could have withdrawn the notice and limited further wasted expense for all by saving at least some inquiry time. The inquiry ran into a second day.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

11. 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 the Council of the London Borough of Camden shall pay to Mr Jon Curtis of IDM

Land Ltd, 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.

12. The applicant is now invited to submit to the Council of London Borough of Camden, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*A Harwood*

INSPECTOR