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## Costs Decision

Site visit made on 7 December 2021

**by G Robbie BA(Hons) BPI MRTPI**

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

**Decision date: 25<sup>th</sup> January 2022**

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### **Costs application in relation to Appeal Ref: APP/E5900/W/21/3271129 9 Gaselee Street, Isle of Dogs E14 9QZ**

- 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 KPL (Katrin Properties Ltd) for a full award of costs against the Council of the London Borough of Tower Hamlets.
  - The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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### **Decision**

1. The application is refused.

### **Reasons**

2. Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only 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. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it.
3. The Council has not responded to the appellant's grounds for making an application for an award of costs which refer, albeit briefly, to each of the reasons for refusal cited on the decision notice.
4. The first ground for an award of costs refers to the second of the reasons for refusal, stating that the grounds set out therein are not part of the criteria for applications made under Class AA of the Order<sup>1</sup>. Paragraph AA.2(3)(a)(ii) of the Order cites the external appearance of the dwellinghouse, including the design and architectural features of its principal elevation as a matter for which prior approval must be applied for.
5. The second refusal reason clearly refers to the harmful effect of the proposed extension in this context. Furthermore, whilst reference is also made to the harmful effect of the proposed extension on the wider terrace and surrounding area, it is clear that the design, architectural features and appearance of the appeal property is part of a carefully considered design approach to the whole terrace. The harmful incongruity of the proposal also causes harm to the

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<sup>1</sup> Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

character and appearance of the terrace which, in turn, further highlights the harmful effect of the proposal.

6. I am satisfied that the second refusal reason clearly considers the proposal against the relevant provisions of the Order. The inclusion of reference to policies as set out in the development plan is not fatal to the proposal and which, in any event, align with the provisions of the National Planning Policy Framework (the Framework) insofar as relevant to the subject matter of the prior approval application.
7. With regard to the Council's evidence to support the first of the reasons for refusal, it is not entirely clear from the available evidence as to its applicability to the appeal site itself. Having considered the submissions, I am not persuaded that it is sufficiently compelling or robust to counter the appellant's own submissions. However, for the purposes of an appeal under section 78<sup>2</sup> of the Act I am satisfied that this reason for refusal was underpinned by sufficient evidence for the Council to reach the conclusion that they did, albeit one that I do not consider to be central to the outcome of the appeal.
8. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. An award of costs is not therefore justified.

*G Robbie*

INSPECTOR

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<sup>2</sup> Of the Town and Country Planning Act 1990 (as amended)