



Costs Decision

Site visit made on 14 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 31 October 2016

Costs Application in relation to Appeal APP/P2935/F/16/3149947 Bolton Mill, Alnwick, Northumberland NE66 2EH

- The application is made under the Town and Country Planning Act 1990, and Schedule 63 of the Local Government Act 1972, section 250(5).
 - The application for a full award of costs or a partial award is made by Mr C H A Burrell against Northumberland County Council.
 - The appeal was against a Listed Building Enforcement Notice (LBEN) relating to partial demolition of the Mill Building and the Cartshed/Granary building.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) states that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has '*behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process*'. Both criteria must be shown to have been met. The costs application has been made in a timely manner.

The Appellant's case

3. In support of the application it is contended that the Council has not properly exercised its development management responsibilities; that it's unreasonable behaviour caused the appellant to incur unnecessary expense and that an appeal could have been avoided if the Council had been more diligent in it's enforcement investigations. Examples are set out of types of behaviour which may give rise to a substantive costs award and three specific grounds are then covered.
 4. In the first instance (Ground 1) it is contended that the LBEN should not have been served in the first instance and that the Council was written to on 26 November 2014 detailing why Bolton Mill was not considered to be a listed building. Following a subsequent meeting it is further contended that the Council did not analyse the appellant's stance and that the response failed to consider the listing approach to other Mills in Northumberland. Reference is specifically made to the listing of Abberwick Mill House. It is considered that, if the Council had researched the position in relation to this listed Mill, in all likelihood a LBEN would not have been issued with regard to Bolton Mill.
 5. On the second point (Ground 2) it is stressed that, save for a chance encounter with a surveyor who assessed the alleged unauthorised works carried out, nothing was heard from the Council between the date of their letter of 25 January 2015
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until the LBEN was issued on 11 April 2016, approximately 15 months after the previous communications. In the meantime the appellant had instructed Leading Counsel, who, following a site visit in March 2015, provided an Opinion that Bolton Mill was not a listed building. This Opinion was reviewed, together with the Draft grounds of Appeal before the appeal was submitted. It is contended that the Council should have reviewed their case promptly on receipt of this information and, as part of a sensible on-going case management of the enforcement action, should have withdrawn the LBEN.

6. Finally (Ground 3) reference is made to paragraph 3.2.19 of the Council's statement where it is contended that it seeks to justify its position that '*doubt, may therefore, exist in some circumstances*'. It is firmly stated that instigating LBEN action on such a basis is both unacceptable and unreasonable. Having regard to the Abberwick Mill listing situation the Council's case is not considered to withstand objective analysis. It is concluded, therefore that the appellant has been put to wasted expense in the appeal process due to unreasonable behaviour on the part of the Council.

The Council's response

7. The Council refutes that it acted unreasonably. It does not accept that the appellant has not incurred wasted expense as a direct consequence of any unreasonable action on its part in relation to the appeal process. It is stated that the Council has acted reasonably at all times throughout the case. The three points (Grounds) put forward in support of the appellant's application are responded to as set out below.
8. On Ground 1, the Council comments that the costs application appears to centre on the appellant's contention that it had not properly researched the points and issues raised in the case and had failed to keep it under review. This is refuted and it is stated that the Council acted wholly in accordance with its '*Strategy for Monitoring and Enforcement of Planning Control*' (SMEPC).
9. It is stated that the Council has received ongoing advice from its expert heritage officers, as well as undertaking regular reviews of the case. It is stressed that its position has remained consistent in that Bolton Mill (and the Cartshed Granary building) are of special historic interest and that they have architectural and historic links with Bolton Mill House. The Council refers to this being set out in substance in its letter of 28 July 2014 to the appellant. This remained the same at the time of the service of the LBEN. The Mill has always been considered to have been within the curtilage of the house and the Council refers to this as being '*quintessentially a matter of fact*' and that each case must be assessed on its merits.
10. In response to Ground 2 the Council contends that it has continued to act diligently throughout the case and has carried out adequate prior and on-going investigations. It is indicated that this included site visits; regular internal meetings and the commissioning of a report in January 2016 (by McKay and Partners) relating to the condition of the buildings and the accuracy of the LBEN when specifying the requirements. Reference is made to paragraph 2.12 of the SMEPC relating to the need for further investigatory work; the checking of records and the involvement of both internal and external consultees. With regard to the overall time-scale it is stressed that planning enforcement is complex and will undoubtedly follow varying timescales and officer time to investigate matters.

11. On the final Ground 3 it is stated that a quoted sentence from the Council's statement has been taken out of context from the previous sentence which it follows. The preceding sentence had referred to the Hansard extract which stated that *'the new lists will therefore leave little room for doubt'*. It is stressed that the Council's point (or stance) is that doubt is not eradicated by this Hansard record and that, therefore *'Doubt may, therefore, exist in some circumstances'*. In the Council's view this reinforces their decision to issue the LBEN.

Assessment of the application

12. On the first ground, I acknowledge that the letter of 26 November 2014 set out the appellant's stance and why it was considered that 'Bolton Mill' was not a Listed Building. However, prior to that the Council's letter of 28 July 2014 to the appellant had made it clear that it was their view that the Mill was a curtilage listed building and they also had concerns about the demolition of the Cartshed. This letter also referred to matters and legislation relating to protected species. Following the meeting of 21 January 2015, the Council again set out its position (albeit briefly) in a letter dated 26 January 2015 that Bolton Mill was a curtilage building under section 1(5)(b) of the PLBCAA.
13. In that letter it was confirmed by the Council that the appellant's assessment set out on the 26 November 2014 letter was not accepted and that it *'would be moving towards enforcement proceedings for the unlawful demolition of the Mill'*. It further confirmed that in their view the 'Bolton Granary' (Cartshed/Granary) was also considered to be a curtilage listed building.
14. I acknowledge that the Council has not responded in detail with regard to the different situation at Abberwick Mill and this could be considered to have been unreasonable. However, the Council acknowledges the appellant's stance in relation to other listed buildings (including Abberwick) but confirms its own view that each situation is still required to be assessed on its merits. Ever since the unlawful works were brought to its attention, the Council has been consistent in its view that the Mill and Cartshed/Granary were both curtilage listed buildings.
15. Despite the differing rulings on listing at Abberwick Mill, therefore, I consider that even if they had referred to this in more detail it would not have altered their stance with regard to their analysis that the Mill and Cartshed/Granary buildings were listed by virtue of section 1(5)(b) of the PLBCAA. Nor would it have affected the preparation of the appellant's case which relied heavily on the Abberwick Mill situation in comparison to the situation at Bolton Mill. The facts are that the unauthorised works were carried out (because the appellant did not consider the buildings to be curtilage listed); the Council then informed the appellant that the works were unlawful, in their view, because the Mill was listed and the Council then eventually considered it expedient to issue the LBEN.
16. But, even though the Council could be accused of acting unreasonably in not indicating to the appellant their particular view of the other listed building situation, I do not consider that this behaviour led to unnecessary loss and expense in the appeal process. It may well have prolonged the process but once the works had been carried out and the Council's view was made clear, it was inevitable that an appeal would go ahead. It was not incumbent on the Council to withdraw the notice on the basis of Counsel's Opinion or on the facts relating to Amberwick (or any other) Mill. An appeal was inevitable given the parties' different positions. The fact that Leading Counsel was instructed on the basis *'that an appeal might be necessary at some point'* reinforces my view that the Council's actions did not lead to unnecessary loss and expense on this first ground.

17. On Ground 2, I accept that it was unreasonable of the Council to have taken so long to issue the LBEN. Whilst appreciating the complexities of cases such as this, a period of 15 months seems excessive in my view. However, again I do not consider that this behaviour led to unnecessary loss and expense. The appellant had justifiably chosen to fight the Council's stance and considered it appropriate to seek legal opinion on the substantive point relating to the listed status of the Mill and the Cartshed/Granary. Once that decision had been made there was no alternative, in my view, that both parties had to continue to argue their respective positions. The Council stuck to its initial contention that both buildings were curtilage listed and although I disagreed that the Mill was a listed structure, the Council was again entitled to keep to its stance. In doing so I consider that it set out its case appropriately if somewhat belatedly.
18. On the third point (Ground 3) I do not consider that the Council tried to justify its position on the basis that *'doubt, may therefore, exist in some circumstances'*. From a full reading of their case it is clear that this sentence was not the basis on which they decided to take LBEN action. They instigated the action on the clear contention that both the Mill building and the Cartshed/Granary were listed curtilage buildings and that parts had been unlawfully demolished. I accept the Council's point that doubt is not eradicated by the Hansard record. Even if the list description does not separately list each building, the use of the word 'doubt' leaves the way open for any situation to be questioned and analysed 'quintessentially on the facts'. Thus doubt may still exist in some circumstances and that each case still needs to be considered on its merits.

Overall conclusion

19. I conclude that although certain aspects of the Council's actions were unreasonable, this unreasonable behaviour did not result in unnecessary loss and expense in the appeal process for the appellant. The parties took opposing stances on the question of listing. Once the appeal had been made and the cases set out, it was inevitable that the appeal would have to run its course.
20. In relation to the appeal process I do not consider that any of the Council's actions, whether unreasonable or not, led to unnecessary expense on behalf of the appellant. Once the respective positions were set out it was always going to be necessary for both parties to pay their own way through the process and irrespective of how long that took. The appellant's expenses were all going to be necessary given the Council's position from the start. I conclude, therefore, that both criteria of unreasonable behaviour and unnecessary loss and expense in the appeal process have not been met and an award of costs is not justified.

Anthony J Wharton

Inspector