

Costs Decision

Site visit made on 16 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 23 December 2016

Costs Application in relation to Appeal Ref: APP/C1625/F/16/3150990 2 Rosebank Cottages, Slad, Stroud GL6 7QD

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Iain Collins against Stroud District Council (the LPA)
 - The appeal was against the issuing of a Listed Building Enforcement Notice (LBEN) relating to works to staircases and to the attic of the above listed building.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 expense in the appeal process.

The gist of the appellant's case

3. In support of the application for costs, it is contended that the LPA has behaved unreasonably by serving the LBEN prematurely without allowing a right of appeal against a refusal of listed building consent for the same works and where the reasons for refusal were the same as for the reason for issuing the notice. It is indicated that an appeal could have been made against refusal of LBC up to the 10 June 2016, but the end date for the LBEN to become effective was 26 May 2016. Thus the LPA had requested a LBC application and have not allowed the appellant the full 6 month period during which an appeal could have been made.
 4. In both cases it is argued that the reasons are flawed because the LPA failed to: seek an assessment of significance as required by paragraph 134 of the National Planning Policy Framework (NPPF); failed to assess the significance themselves; failed to give consideration to paragraph 134 of the NPPF relating to the 'public benefits', outweighing the 'less than substantial harm'.
 5. On the 'public benefits' point the LPA indicated that there were no such benefits. However, it is contended that the LPA failed to take into account the fact that the appellant offers public access to the former home of Laurie Lee. It is also indicated that PPG indicates that 'public benefits' do not always have to be visible or accessible in order for the public to benefit. It is contended that the NPPF policies and the PPG guidance were not properly used by the LPA in relation to the application for LBC.
 6. It is considered that had the LPA properly investigated the significance of the building using the appropriate policy and guidance, then the works would have been granted consent the LBEN would not have required. Because of the LPA
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actions it has been necessary to employ a historic building consultant who has had to work at very short notice. Thus the LPA actions have resulted in unnecessary loss and expense in the appeal process.

The Council's response

7. In response the LPA refutes that it has acted unreasonably and indicates that the LBEN was issued to undo the unauthorised works to the listed building. There is nothing in the planning and listed building guidance (whether in the NPPF or PPG) which indicates that an authority must await an appeal under section 20 of the PLBCAA before issuing a LBEN). In any case the LBEN was only issued 19 days before the section 20 appeal period ended. The issues are the same and it is both fair and appropriate that the issues be dealt with concurrently.

8. There is no merit in the appellant's argument that the LBC or the reasons for issuing the LBEN were flawed. The LBC application was considered by the LPA's Senior Conservation Officer (SCO) who referred correctly to the relevant policies, guidance and regulations.

9. It is stressed that the appellant's assessment of significance (AS) was submitted in the form of a Design and Access Statement (DAS) and the LPA paid due regard to its contents. A more comprehensive AS would have been preferable but, due to set determination periods, it was considered that the DAS gave sufficient information on which the LPA could make a decision.

10. With regard to 'public benefits', the LPA indicates that it is well aware of the relevant PPG and the NPPF policies. However, it is contended that the works as carried out have no 'public benefits' whatsoever and that the works have caused harm to this historic asset. The LPA contends that it carried out a proper assessment of the works as carried out; that it properly used the correct guidance in reaching its decision; that the issuing of the LBEN was lawful and proportionate; that it sought a retrospective LBC application and had made it clear to the appellant in 2010 that the sub-division of the attic would not be looked upon favourably.

11. With regard to the 'stress and anxiety' and the hiring of a consultant, the LPA's view is that any such stress was brought upon the appellant by his actions in carrying out unauthorised works and that hiring a consultant was a matter for the appellant. In conclusion the LPA does not accept that it behaved unreasonably or that its actions led to unnecessary loss and expense in the appeal process.

My assessment

12. Having considered the full submissions of this costs application and taking into account my findings in this appeal I do not consider that an award of costs is justified.

13. First, there is no obligation for a LPA to wait until the end of the 6 month period for an appeal under section 20 of the PLBCAA. If a LPA considers it expedient to issue a LBEN, then they can do so at any time and irrespective of whether or not the action is linked to a previous refusal for LBC.

14. In any case the appellant could have appealed the LBC at any time within the 6 month period. It is also the case that even though he did not appeal that decision, the issues in relation to the LBEN are exactly the same. Thus the appellant would still have had to prepare the same arguments as put forward in this LBEN appeal. Given that the same works and issues are relevant there is every likelihood that the same heritage consultant would have to have been

appointed. Also if a section 20 appeal had been made it would have been linked by the Planning Inspectorate to the LBEN appeal.

15. I do not accept that the reasons for refusal of the LBC application, or the LBEN, are flawed. It is not the duty of a LPA to seek out an assessment of significance as required by paragraph 134 of the National Planning Policy Framework (NPPF). Rather, it is for an applicant to submit such a statement in support of its case. However, in this case, the LPA did consider that the DAS heritage statement was sufficient in order for them to reach a decision.

16. On the 'public benefits' point I agree with the LPA that there are no such benefits. These benefits are meant to outweigh any harm that is less than substantial. The harm alleged by the LPA in this case was not considered to be outweighed. The benefits referred to by the appellant, of offering public access to the building cannot be directly related to, or an excuse to, carry out unauthorised works to a listed building.

17. It may well be that the LPA was not fully aware of the significance of the old staircase and exactly when those works were carried out. However, it was perfectly entitled, in my view, to reach the conclusion that harm had been caused to the listed building on the basis of what it had seen on site. I have clearly disagreed with the LPA with regard to the overall impact of the works but that does not alter the fact that it was entitled to take the stance it did in its assessment of the unauthorised works carried out.

18. Finally the choice to employ a historic building consultant was a matter for the appellant and this would not have been required had the works not been carried out without LBC in the first instance. I do not consider that it was any fault of the LPA that this course of action was taken by the appellant.

19. In conclusion, therefore, I do not consider that it has been shown that the LPA acted unreasonably and nor do I consider that any of their actions led to any unnecessary loss and expense in this appeal process for the appellant. The application for an award of costs, therefore fails.

Anthony J Wharton

Inspector