
Costs Decision

Site visit made on 10 January 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 23 January 2017

Costs application in relation to Appeal Ref: APP/F0114/F/16/3155136 Flat 2, 15 Alfred Street, Bath, BA1 2QX

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 39, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr John Harford for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against a listed building enforcement notice alleging the conversion of the sub-basement and vaults to additional living accommodation.
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Decision

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

Reasons

2. Planning Practice Guidance 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.
 3. The appellant states that the Council has been unreasonable because there is no reasonable objection to the change of use of the lower ground floor to residential. The reason for serving the notice was directed at and motivated by a change of use. The reasonable alternative was to have sought a listed building application.
 4. In response the Council refers to the Guidance at paragraphs 16-27 and 16-28 relating to behaviour during the appeal process and that the Council has not acted unreasonably in the appeals process. The works carried out required consent but despite the appellant employing a surveyor, no application was submitted.
 5. The Guidance states that in respect of unreasonable behaviour it can relate to matters prior to an appeal being made. For enforcement action, paragraph 16-048 of the Guidance says that local planning authorities must carry out adequate prior investigation. They are 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 in the first place, or ensured that it was accurate.
 6. In this case the Council was in discussion with the appellant or agent in advance of the serving of the listed building enforcement notice and only considered it expedient to serve the notice when an application for listed
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building consent failed to be submitted. This does not represent unreasonable behaviour. Although the appellant considers that the Council would have determined an application in a similar fashion to 8 The Paragon, firstly it is wrong for the appellant to make such assumptions and, secondly, the submission of an application was in his control yet he failed to submit one.

7. The appellant appears to have misunderstood the allegation in the notice by interpreting it as attacking the change of use of the lower ground floor to residential whereas the allegation relates to the conversion of the sub-basement and vaults to additional living accommodation. This is a quite different to how the appellant has chosen to interpret it.
8. In this case, I find that unreasonable behaviour resulting in unnecessary expense, as described in the Guidance has not been demonstrated and that a full award of costs is not justified.

P N Jarratt

Inspector