

Costs Decision

Site visit made on 30 January 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 10 February 2017

Costs Application in relation to 3 Appeals:

Appeal A - APP/R2520/F/16/3147352

Appeal B - APP/R2520/W/16/3147269

Appeal C - APP/R2520/Y/16/3147221

Relating to Thorpe House, Ewerby, Sleaford NG24 9PR

- 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 Mrs Mandy Rodger against North Kesteven District Council.
 - The Appeals were against a Listed Building Enforcement Notice (LBEN) – Appeal A; a refusal of planning permission (PP) – Appeal B and a refusal of Listed Building Consent (LBC) all relating to works carried out to the Grade II listed Thorpe House.
-

Decision

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

Reasons

2. 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 case for the Appellant

3. It is contended that, in refusing the PP and LBC applications (15/1351/HOUS and 15/1352/LBC), submitted in November 2015, and subsequently taking LBEN action, the LPA behaved unreasonably. Firstly it is stated that it failed to consider the approved 2008 scheme (08/0837/FUL and 08/2274/LBC) in relation to the applications. It is argued that the 2008 scheme was harmful to the listed building and that the LPA failed to have sufficient special regard to the applications at that time. The 2015 scheme, in addition to attempting to regularise the situation, had sought to improve upon the 2008 scheme, including a more appropriate conservatory; more appropriate garage doors and windows; a new sash window to the east elevation and compliance with other aspects of the 2008 scheme.
 4. In dealing with the 2015 applications and issuing the LBEN, conversely, the LPA now seeks in part to better some elements of the 2008 scheme and to control other parts which were consented to at that time. Reference is made to the rainwater goods and the metal flue. It is argued that the LPA's actions have resulted in a more detailed appeal than might have been required and that the LBEN action and subsequent appeal would not have been necessary
-

had the LPA taken into account all of the matters resulting from the 2008 scheme.

5. It is further contended that the LBEN appeal is now necessary to regularise matters and that the notice will need to be amended or revised. It is also stressed that the LPA only informed the Appellant latterly that planning enforcement action would not be taken due to the four year ruling. It is considered that this leaves an uncertain situation as to what does and what does not have PP or LBC. This is considered to be unreasonable behaviour on the part of the LPA particularly bearing in mind the various meetings with officers. It is considered that their actions have led to the unnecessary expense in the appeal process.

The gist of the LPA response

6. The LPA does not consider that it acted unreasonably and refers to the 2015 PP and LBC applications being refused. It indicates that the LBEN was issued to regularise unauthorised works to the listed building which had not been carried out in accordance with the 2008 permission and consent. It is stressed that following meetings and correspondence between the parties the Appellant had been advised that it was unlikely that the works applied for in 2015 would be likely to be granted consent. Nor does the LPA accept that the LBEN contains errors and omissions (other than that relating to rainwater goods). It is of the view that the notice covers all of the relevant unauthorised works that, in their view, has been harmful to the listed building and ought not to be allowed to remain in place .

Assessment

7. Turning to the facts of this case, it is evident that the works carried out by and on behalf of the appellant were not in accordance with the 2008 PP and LBC. They were, therefore, unauthorised works and the PP and LBC of 2008 cannot be said to have been implemented. The LPA, for whatever reasons failed to take action within the 4 year period in relation to the various breaches of planning control. Thus, it was not empowered to issue a planning enforcement notice. However, it was entitled to issue the LBEN.
8. It clearly considered it expedient to do so and there is no time limit relating to when a LBEN can be issued. The works had not been carried out in accordance with the 2008 consent and the Appellant had not objected to, or commented upon, what had been allowed at that time. It was not unreasonable, therefore, for the LPA to seek to regularise the situation by issuing the LBEN. If the 2008 applications had been complied with, the LPA could not have objected but, as is known, the Appellant, albeit not purposely, had not complied with the 2008 scheme having been misadvised by a contractor.
9. The LPA was entitled to reach a conclusion that the 2008 scheme had not been complied with and, in relation to the 2015 scheme, they were not obliged to reflect on the planning judgement of their 2008 permission and consent. It may well be that this amounted to poor judgement with regard to the rear extension but that was the decision made by the LPA at that time. Furthermore, from the submissions made in these appeals, it is evident that the LPA stands by that decision. I do not consider that the LPA acted unreasonably in not taking into account the views now put forward by the Appellant's adviser regarding the 2008 permitted scheme.

10. Turning to the 'confusion' regarding permissions and consents, I accept that the planning breaches in themselves were not enforceable. However, they were not authorised with regard to the PLBCAA. Without LBC the works could not be retained unless LBC was granted for the unauthorised works. In any case the Appellant had accepted that some of the 2008 approved works were not appropriate and thus the 2015 applications were submitted to regularise the situation. It is not unreasonable for a LPA to issue a LBEN pending appeals on later submissions. That was a matter for the LPA which had made clear that, on the whole, the 2015 scheme was also unacceptable in their view. This was a conclusion that they were entitled to reach.
11. Their reasons for refusal are clear, in my view, and I have agreed with their conclusions on some of the unauthorised works carried out. In my appeal decisions I have dealt with the queries to the LBEN and do not accept the contention that the LBEN was significantly flawed. Under the powers transferred to me I have corrected and varied the notice accordingly. I do not consider that any of these necessary changes have unjustifiably prejudiced the Appellant's or the LPA's case. Nor do I consider that the need to make such changes led to any additional loss or expense in the appeal process for the either the Appellant or the Council.
12. In conclusion, even though I have granted PP and LBC for some of the works (both enforced against and refused PP and LBC), I do not consider that the LPA behaved unreasonably in relation to reaching the decisions they did on the 2015 PP and LBC scheme. Also, I do not consider that the LPA behaved unreasonably in relation to their actions regarding the LBEN.
13. In order to be successful a claim for costs must indicate that any unreasonable behaviour led to unnecessary loss and expense in the appeal process. In this case, I am not convinced that this has been the case and the application for an award of costs is, therefore, refused.

Anthony J Wharton

Inspector