
Costs Decision

Site visit made on 17 January 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 24th February 2017

Costs application in relation to Appeal Ref: APP/X5990/W/3161786 5 Bell Yard, London WC2A 2JR

- 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 Mr Kamal Pankhania, Dholak Estates for a partial award of costs against City of Westminster Council.
 - The appeal was against the refusal of the Council to grant planning permission to erect an apartment on the fourth and fifth floors of the building above the development permitted under reference 15/07344/FULL and listed building consent 15/07345/LBC.
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Decision

1. The Costs application for a partial award is allowed under the terms set below.

Reasons

2. The 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. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. One circumstance where this may occur is where a local planning authority do not review their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management.
4. The application for costs relates to reasons for refusal 2 and 3 in respect of the application for planning permission, which relate to the change of use of this part of the building from office to residential and the effect on living conditions of future occupiers of the residential unit in relation to the then extant office use on the floors below.
5. The basis of the appellant's claim is that the Council had been advised over the life of the application now the subject of this appeal that the previous approval for the conversion of the main body of the building from office to residential was to be implemented. This being so, they acted unreasonably in refusing the present application on the basis of a conflict with newly adopted development plan policy and a conflict with the established and proposed uses within the building.

6. It is the case that as a matter of fact the changed policy position, at the time of the determination of the appeal proposals, rendered them in conflict with the policies of the development plan and that the resultant conflict in the juxtaposed uses could be construed harmful to living conditions of future occupiers. Moreover, despite the appellant's entreaties that the implementation of the approved scheme was imminent, it appears to me that on the basis of the evidence presented, they acted within the letter of the policy framework and guidance, whether or not it could be argued that a more pragmatic and flexible approach, not least in the timing of the determination of the application, may have resulted in the omission of these second and third reasons for refusal. So, although the Council may be judged inflexible in their approach to the determination of the planning application in this regard, this falls short in my view of acting unreasonably.
7. However, circumstances in relation to the appeal have moved on. At the time of the appeal and as set out in the appellant's evidence, it is made clear that the permission already granted for the change of use, had as a matter of fact been implemented. This gives effect to the extinguishment of the office use on within the main body of the building.
8. In this changed context, it seems to me unreasonable to continue to apply policy S20 (resisting change of use from office to residential) where its application would manifestly create the conflict between the retained use and the one granted and now implemented on the floors below. Moreover, with the residential use now invoked the conflictual issues of the two uses identified in the third reason for refusal, fall away.
9. The reasonable approach of the Council in this circumstance would be to have reviewed their case, sustaining their objections to both planning permission and listed building consent on the grounds of harm to the designated heritage assets, but to have elected not to defend the second and third reasons for refusal on the planning permission.
10. In not adopting this approach the Council have required the appellant to defend the two reasons for refusal in evidence for the purpose of the determination of the appeal. Such behaviour is in my view unreasonable and has caused the appellant unwarranted and wasted expense as a consequence.

Costs Order

11. Accordingly, in exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Council of the City of Westminster shall pay to by Mr Kamal Pankhania, Dholak Estates, the costs of the appeal proceedings in so far as they relate to reasons 2 and 3 of the decision notice as set out above, such costs to be assessed in the Senior Court Costs Office if not agreed. The proceedings concerned appeals under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of an application for planning permission to erect an apartment on the fourth and fifth floors of the building above the development permitted under reference 15/07344/FULL at 5 Bell Yard London WC2A 2JR.

12. Mr Kamal Pankhania is now invited to submit to The City of Westminster Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

David Morgan

Inspector