
Costs Decision

Site visit made on 11 April 2016

by P N Jarratt BA (Hons) DipTP MRTPI

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

Date 31 March 2017

File Ref: APP/P1133/F/16/3141640

39 East Street, New Road, Newton Abbot, Devon, TQ12 23P

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 39 and 89, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Damian Pope for a full award of costs against Teignbridge District Council.
- The appeal was against a listed building enforcement notice relating to the removal of sash windows at the front of the property and the installation of uPVC windows at the rear.

Summary of Decision: that an award of costs is not made.

1. 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.

The submissions by Mr Pope

2. The Council has referred to matters that were unnecessary and made factually incorrect statements despite being previously advised. This has required the applicant to repeat the points and to have recourse to case law.
3. The Council has failed to produce evidence to substantiate or support their submissions and they have made many misleading statements or failed to agree facts. The Council has misapplied legislation and misunderstood established principles of law.
4. The Council has been unhelpful and unreasonable in taking action without first investigating or consulting with the applicant for the reason for the removal of the windows, or the reason for the delay in reinstalling the windows. The first time the applicant knew there was an issue with the front windows was reference to them in the notice leading to expense.
5. The Council failed to allow time for the applicant to make further enquiries, or make an application to historic England for the removal of the rear of the building from the list description. The list description is very brief and Historic England would have clarified what was or was not of special historical or

architectural interest thereby negating the need for enforcement and the appeal.

The Council's response

6. The Council acknowledges that it failed to have regard to certain information from the applicant relating to the planning history of the appeal property. Whilst this was an error, that information formed no part of the reasons for issuing the notice, but only formed part of the statement regarding the history of the site. If the applicant had already supplied this information, the applicant could have stated this without the need to expand further as it is not referred to in the notice.
7. Sufficient information has been provided to support the reasons for issuing the notice; the reasons for issuing the notice are clear and precise; they are the relevant facts and these refer to Local Plan Policies and government guidance; no misleading statements have been made; and, it has not misapplied statutory legislation or misunderstood established principles of law but taken enforcement action for a breach of the legislation.
8. Prior to issuing the notice the main issue was the unauthorised replacement of the rear windows but when it was noted that the front windows had been removed for some time they were included in the notice to ensure that that they would be replaced. It is agreed that this could have been brought to the applicant's attention earlier.
9. Prior to issuing the enforcement notice the applicant had tried to liaise with Historic England to have the property de-listed. It was the Council's understanding that in view of on-going enforcement issues, this was not something that would be pursued. Furthermore as the matter had been going on for a considerable time, the Council did not wish to delay taking action.

Reasons

10. Planning Practice Guidance at paragraphs 16-046 to 16-049 set out the types of behaviour that may give rise to a procedural or substantive award of costs against a local planning authority.
11. Whilst the Council could have taken greater care in the accuracy of the planning history of the appeal premises in their statement of case, I consider this to be a result of human error rather than unreasonable behaviour, particularly as the information related to the discharge of conditions on earlier listed building consents and was not of any significance to the allegations in the notice. It is not, as the applicant alleges, an attempt to discredit him or deliberately seek to mislead, nor was there any need for recourse to judicial authority as this was not relevant to the issues relating to the enforcement notice.
12. In matters of understanding the historic record of a building, some degree of interpretation is often necessary and this is what the Council has done in their statement of case. Whilst additional evidence to support such interpretation would have been helpful I find nothing unusual in the Council's approach which is not unreasonable, nor has it led to any wasted expense. The fact that the applicant may disagree with the Council's interpretation does not make it wrong.

13. I agree that the Council has provided no evidence to substantiate their fear that the appeal property could be demolished if de-listed. However it is a genuinely expressed fear and whilst the applicant may have no plans to demolish the property, there is no guarantee that subsequent owners would take the same view.
14. Although the applicant alleges that the Council has misapplied legislation and misunderstood the law, there is nothing in the Council's administration of the enforcement process or for that matter in the costs application that leads me to this conclusion other than in respect of the provisions of the Enterprise and Regulatory Reform Act 2013 which I consider below.
15. The Council could have entered into discussions with the applicant regarding the removal of the front sash windows. However as the windows had been removed for some time, the Council's concern was correctly focussed on their reinstatement and it was expedient for these windows to be included in the enforcement notice along with the rear windows. There is no evidence to indicate that an appeal would have been avoided had they entered into earlier discussions. Even had they had prior discussion with you, there would have been no guarantee that the windows would have been reinstated expeditiously despite any assurances that may have been given. An enforcement notice provides greater power to the Council to achieve this. I do not consider that their approach represented unreasonable behaviour.
16. I note that the applicant received an email from Historic England on 16 November 2015 indicating that the E&RR Act allows list descriptions specifically to exclude parts of a building that are not of special interest and indicating how to make an application. However the enforcement notice was issued on 24 November 2015 despite the applicant's request that the Council deferred action. It seems from correspondence¹ that the Council had misunderstood the provisions of the E&RR Act in respect of amending list descriptions. Whilst my understanding is that Historic England will not generally consider applications for de-listing if enforcement action is in hand, it is unclear whether list descriptions can be amended when enforcement action is in progress. Notwithstanding this I am unaware of any follow up to the email by the applicant to seek a revised description. In any event, the Council considered that as matters had gone on for some time, enforcement action was necessary and this does not represent unreasonable behaviour, despite the lack of understanding by the Council of the provisions of the E&RR Act.

Conclusion and decision

17. Paragraph 16-050 of the Guidance points out that where local planning authorities have exercised their duty to determine applications in a reasonable manner, they should not be liable for an award of costs. In this case, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and an award of costs is not justified.

P N Jarratt

Inspector

¹ PP 22-26 of Appendix to the Appellant's reply to the LPA's Statement