
Costs Decision

Site visit made on 11 April 2017

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 22 May 2017

**Costs application in relation to Appeal Ref: APP/Z2260/F/16/3144971
Sarre Windmill, Canterbury Road, Sarre, Birchington CT7 0JU**

- 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 R Hill for a full award of costs against Thanet District Council.
 - The appeal was against a listed building enforcement notice alleging, without listed building consent, the installation of one internal upvc door and one external upvc door.
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Decision

1. The application for an award of costs is partially allowed in the terms set out 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.

Internal door

3. The appellant identifies the Planning Practice Guidance paragraph 048, which notes that a local planning authority may be at risk of an award of costs where there is a lack of co-operation or that proper prior investigation has not been completed. In this case the enforcement notice is clear and relates to the upvc internal door which has been inserted into the listed building without consent. There is little to suggest that the authority has not co-operated in terms of the enforcement action taken. I do not think in respect of this door more diligent investigation would have made any difference, the door is clearly identified and is unacceptable and must be removed.
4. The appellant did submit a listed building application which was refused with reasons given. I acknowledge that the appellant says the decision was 3 weeks late, but that is not unreasonable behaviour sufficient to warrant an award of costs. The appellant suggests the council should then have engaged with the applicant to look for a solution as required by the National Planning Policy Framework which provides guidance to this effect. It seems to me that the inner door is unacceptable as built and as subsequently proposed and the council has made that clear with the issue of the enforcement notice and refusal of the subsequent application.

5. It is not for the council to come up with a design solution. That is for the appellant and his agents and for any suggestions to be put to the council. To my mind it is hard to envisage what would be acceptable in such close proximity to the original door and I can understand why the council would have difficulty coming up with a solution. The appellant suggests that the only issue is with the design and materials and that there is no objection to the location. However, the location is part of the design and the proposed solution will have to take this into consideration. Whatever the case, this will be a matter for the appellant to demonstrate acceptability to the council when an application is made, but in the meantime it is reasonable that the current door is removed, which warrants enforcement action.
6. I note the appellant's view, but I conclude that the requirement to remove the door by service of the notice was proportionate and limited to the element causing the harm, which is reasonable.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified in this respect.

External Doors

8. I acknowledge in respect of the external door that the notice is incorrect, because it does not have a requirement to replace the door that is to be removed or provide for a direct replacement of it. This would leave the building potentially open and at risk to the elements and as explained in the main decision is not acceptable. The application for an award of costs is successful in this respect and a partial award of costs will be made.

Costs Order

1. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Thanet District Council shall pay to Mr R Hill, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the external upvc door; such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is now invited to submit to Thanet District 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.

Graham Dudley

Inspector