

Costs Decision

Site visit made on 8 August 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 17 August 2017

Costs application in relation to Appeal Ref: APP/Y5420/X/17/3166831 Flat 1, 1 South Side, Tottenham Green East, London N15 4DQ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, section 89(1) and Schedule 3, Para. 6(8) and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Hannah Vasdekys for a full award of costs against the Council of the London Borough of Haringey.
 - The appeal was made under section 26K of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the refusal of a certificate of lawfulness of proposed works to a listed building for remediation of rising damp inside flat.
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Decision

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

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.
3. The Council considered the application as if it was for a certificate of lawfulness for a proposed use or development and on the basis that it was made under the provisions of Section 192 of the Town and Country Planning Act 1990 (the Planning Act). The delegated report and the decision notice both refer to this legislation and the latter document states that the reason for the refusal of the application is that "The proposal is considered to be development within the definition contained under Section 55(1) of the Town and Country Planning Act 1990 and requires planning permission and listed building consent".
4. The Council's approach to the application, which clearly indicates that it is made under the provisions of Sections 26H and 26I of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB&CA Act), was fundamentally flawed. It is unlikely, in this regard, that Officers of the Council were conversant with the provisions of the LB&CA Act when they considered the merits of the application. The flawed approach to the application was compounded by the failure of any Officer to visit the property before it was determined. It is not possible, particularly in this case where the works are wholly internal, to reach a judgement on the effect of works to a listed building without visiting the building.
5. If Officers of the Council had been conversant with Section 26H of the LB&CA Act they would have understood that for the proposed works to be lawful they

would have to not affect the character of the listed building as a building of special architectural or historic interest. It is worth noting, in this regard, that even in their response to the application for an award of costs the Council refers to an effect on "...the character and appearance of the listed building". The reference to 'appearance' is misplaced and is a further indication that Officers of the Council are not sufficiently conversant with the provisions of the LB&CA Act.

6. The Council's principal argument in response to the application for an award of costs is to maintain that "...the applicant failed to submit relevant information to support their case..." at application stage. Section 26H of the LB&CA Act does require the submission of 'such plans, drawings and information as are necessary to describe the works' and 'a statement explaining why the applicant believes the proposed works would not affect the character of the listed building'. But the Council could have withheld validation of the application if they considered that the information submitted did not meet these requirements or, more reasonably, could have asked the applicant to submit additional information to assist Officers with their determination of the application; this is a commonly used procedure.

7. The Council's determination of the application was not in accordance with, or as required by, the legislation under which it was made and was unreasonable. The Council's failure to visit the appeal property prior to determination of the application was also, given the circumstances of the case, unreasonable. If Officers of the Council had applied the appropriate legislation and visited the property it is likely that their recommendation, and the ultimate decision of the Council, would have been different. The Appellant has been obliged to submit an appeal and has incurred unnecessary expense in the appeal process.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of shall pay to Ms Hannah Vasdekys, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

9. The applicant is now invited to submit to the Council of the London Borough of , to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Braithwaite

Inspector