
Costs Decision

Site visit made on 9 September 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Costs application in relation to Appeal Ref: APP/L5810/C/18/3217122 Flat 4, 18 Belgrave Road, Hampton TW12 2AZ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Marcin Wiercinski for a full award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against an enforcement notice alleging the unauthorised installation of UPVC framed windows at first floor level.
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Decision

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

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. The appellant argues on the substantive basis that the Council behaved unreasonably in requiring an unnecessary appeal to be fought. For enforcement action, local planning authorities must carry out adequate investigation and are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have avoided the need to serve the enforcement notice.
4. In this particular case it is contended by the appellant that enforcement action was originally taken on an erroneous basis that the replacement windows were of a different design to the original ones and consequently had a harmful effect on the host building and the Hampton Village Conservation Area. It is my understanding that the Council accepted that it had made an error and subsequently withdrew the original enforcement notice on the basis of the information provided by the appellant with respect to the design of the original windows.
5. The substantive claim is that the Council did not review the requirement for enforcement action and that a proper review by the Council would have shown that there are other examples of UPVC windows along the frontage of properties on Belgrave Road which can easily be seen from the public realm. As such the appellant argues that the appearance of this part of the Conservation Area has already been compromised. Furthermore, it is argued that W3 is not an original window and the Council should have realised that the windows were too small, too inconspicuously located and too indistinguishable from the original windows to be readily apparent.

6. It is evident to me that the Council reviewed the expediency for enforcement action when the original enforcement notice was withdrawn. Indeed, the delegated officer report shows that following the withdrawal of the original notice the Planning Enforcement Team undertook a review of whether it was expedient to issue another notice. It was decided that based on the effect of the replacement windows it was expedient to do so.
7. As set out in my Decision, when determining cases such as this the key issue is whether the works materially affect the external appearance of the building and if it is judged that works do not affect the external appearance, the works shall not be taken to involve development of the land. Therefore, in each case a judgement has to be made depending on the specific facts of the case. In this particular case I have concluded that material changes have been made to the external of the building, but I have found that there is no noticeable change to its external appearance as a whole. That conclusion relates to all four replacement windows, including W3 which I understand was not an original window.
8. I have also concluded that in some circumstances the works that have taken place may be found to be development. Although my decision is against the Council's case, that does not mean to say that the Council has been unreasonable in its approach in taking enforcement action, but rather in my judgement based on a matter of fact and degree the appeal on ground (c) should be allowed. It is a finely balanced case and in such circumstances the behaviour of the Council cannot be described as flawed or unreasonable.
9. The appellant has also stated that there are other properties along Belgrave Road with UPVC windows. That is indeed the case and there is insufficient evidence before me to suggest that the Council has taken any action against other examples. I also find that the Council's argument with respect to their reasons for not taking action is flawed in relation to the type of properties in question. Nonetheless, I am not convinced that the Council has adopted a standard formulaic response to the appeal site, but it has considered its approach carefully as evidenced by the delegated report. Given the complexity of the issue of replacing windows in a Conservation Area and the fine balance that needs to be assessed there is insufficient evidence that the Council's approach to this and other nearby cases is unreasonable.
10. There is insufficient evidence that the Council has been inconsistent in its approach to unauthorised replacement windows in the area and it is not reasonable for the appellant to argue that the Council should have foreseen that their approach was not capable of being sustained at appeal.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

A A Phillips

INSPECTOR