



Costs Decisions

Hearing Held on 24 September 2019

Site visit made on 24 September 2019

by H Porter BA(Hons) MScDip IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

COSTS APPLICATIONS DETAILS

All applications

57 Danetree House, High Street, Odiham, Hook RG29 1LF

- The applications were made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
- The applications are made by Mrs Nohra Currie and each for a full award of costs against Hart District Council.

Costs application in relation to Appeal A Ref: APP/N1730/Y/19/3229573

- The hearing was against the refusal of listed building consent for repairs and redecoration of existing external masonry surfaces.

Costs application in relation to Appeal B Ref: APP/N1730/Y/19/3229596

- The hearing was against the refusal of listed building consent repairs and redecoration of existing external masonry surfaces including chimney and its flaunching.
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Decisions – both applications

1. The applications for an award of costs are allowed, in the terms set out below.

Reasons

2. The applications for awards for costs was made at the event.
3. Planning Practice Guidance (PPG) 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 PPG provides examples of the circumstances that may lead to an award of costs against a local planning authority.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents development that should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The basis of the appellant's claims for costs is the Council failed to give reasoned justification for refusing the applications and that the level of information required by which to understand the potential impact of the proposed works, and supplied at application stage, was proportionate and sufficient.

6. Whether or not the works required listed building consent, that is what the applicant chose to apply for and therefore the Council, in exercising of its development management responsibilities, was required to issue a decision.
7. The Council's reason for refusing both listed building applications was the absence of information and an absence of clarity in the information provided in support of the proposals. It will be seen from my appeal decision letter that I found that the applications were both supported with detailed information, proportionate to the scope of works, which provided enough certainty to establish that the works would preserve the significance and special interest of the listed building. The Council's appeal statement, as well as the Officer Report, set out that there was no in-principle objection to the masonry proposals.
8. From all that I have read and heard at the event, it is evident that the Council did not object to the principle of the works rather they required clarity over certain aspects of detail. I agree that some clarity over certain aspects of detail would be reasonable and necessary. However, I do not think it would have been reasonable to expect the applicant to go to the expense of erecting a scaffold or undertaking more detailed survey work without first having the benefit and comfort of listed building consent being in place.
9. It will be seen from my appeal decision letter I agreed with the Council that some clarity over certain aspects of detail would be necessary. s17(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that a condition may be imposed requiring specific details of the works (whether or not set out in the application) to be approved subsequently. With this in mind, suitably worded conditions could easily have been imposed and used to gain the necessary clarity over certain aspects subsequent to listed building consent being granted.
10. At the event, the Council referred to the pre-commencement provisions inserted by the 2018 regulations and the applicant's reluctance to enter into a dialogue to secure agreement of any pre-commencement conditions. However, these provisions do not apply to applications or appeals relating to listed buildings under the relevant Act. Therefore, subject to the 6 tests, it was the Council's prerogative to impose conditions irrespective of whether the applicant objected to them.
11. Whilst I found that the Council's concerns regarding the level of detail were not unwarranted, conditions could and should have been imposed to address those concerns in order for the applications to succeed. Had this route been taken, permission for works that otherwise would have been in accordance with the statutory duties, development plan and national policy would have been granted. The case as to why conditions were not imposed, and listed building consent ultimately granted, does not stand up to scrutiny.
12. I therefore find that the Council has behaved unreasonably, and this behaviour has caused the applicant to incur unnecessary or wasted expense. This includes the time spent by the applicant submitting the appeals and employing an agent to represent them through the process. A full award of costs is therefore justified.

Costs Order

13. 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 Hart District Council shall pay to Mrs Nohra Currie the costs of the appeal proceedings described in the heading of this award limited to those costs incurred in dealing with the appeals, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. Mrs Nohra Currie is now invited to submit to Hart 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.

H Porter

INSPECTOR