
Costs Decision

Site visit made on 21 October 2019

by **Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

Decision date: 5th November 2019

Costs application in relation to Appeal Ref: APP/K5600/Y/19/3232742 Flat A & B, 35 Queen's Gate, London SW7 5JA

- The application is 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 application is made by Mrs Leila Govi for a full award of costs against the Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of listed building consent for "*retain existing works as per attached heritage statement.*"
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Decision

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

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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
3. The applicant submits that the Council acted unreasonably procedurally in failing to co-operate over information requirements and making procedural errors in their decision relating to consented works. It is also held that substantive unreasonable behaviour is demonstrated as their case was based on inaccurate assertions, inconsistent with previous findings and that overall the works should have been permitted.
4. The property has a long and complex planning history and a number of unauthorised works have been carried out at the property with approved remediation works (reference LB/18/01290) not being undertaken within specified timescales. The appeal proposals sought consent for the retention of some of the unauthorised works, namely layout of the pocket doorway, cornicing and sliding doorway in the kitchen and the works to the dressing room.
5. The Council did make incorrect statements in their case in terms of some matters, including the recessed ceiling lights. The officer report also recommended an enforcement notice be served which listed a large number of alleged breaches that went beyond the scope of the application.

6. However, I found that the scope of the works that the applicant was seeking consent for was ambiguous in light of the complex planning history. Matters were not made particularly clear in the Heritage Statement and it was only as part of the appeal process that the detailed works to be considered were made explicit.
7. In my view, it would have been helpful if both parties had cooperated more, as under paragraphs 189 and 190 of the National Planning Policy Framework sets out the information requirements for the applicant and the Council.
8. It can be seen from my decision that I found harm to the special interest of the listed building from the works and as such the Council have not acted unreasonably by preventing works that should have been permitted. The errors made by the Council arising from the ambiguity did not, in my view, lead to a misunderstanding of the impact of the works once these had been established.
9. I also consider that the Council have been consistent in their approach. The appellant cites the apparent support of a Conservation Officer in 2015, however any such advice has in effect been superseded as the unauthorised works have been considered by the Council in 2018 and as part of the current appealed application. I am also mindful of the Inspector's conclusions to the separate appeal at the property,¹ who felt that the condition to restore the property was reasonable and necessary to safeguard the special architectural and historic interest of the listed building.
10. While there are some minor procedural errors made by the Council, these lead from an ambiguous case made by the appellant and a lack of cooperation from both sides. However, it is clear from the Council's submissions that they found harm to the listed building and the works which the applicant did seek consent for and thus the applicant would have had to appeal the proposals in any case.
11. Accordingly, any costs were not unnecessary as such matters would have been required to be addressed by the applicant.

Conclusion

12. As a result, although I find that the Council acted unreasonably in part, there is no evidence that this caused unnecessary expense. Therefore, no award is made.

C Searson

INSPECTOR

¹ APP/K5600/Y/18/3209654