



## Costs Decisions

Inquiry Held between 15 – 18 October 2019

Site visit made on 18 October 2019

**by Kenneth Stone BSC Hons DipTP MRTPI**

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

**Decision date: 7 November 2019**

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### **Costs application 1 in relation to Appeal Ref: APP/N1730/W/19/3223849 Bramshill House, Bramshill, Hook RG27 0JW**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by City and Country Bramshill Limited for a partial award of costs against Hart District Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for demolition of modern rear extensions and structures, erection of single storey rear extensions, repairs to exterior of buildings and internal refurbishment of Hazeley Lodges.
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### **Costs application 2 in relation to Appeal Ref: APP/N1730/Y/19/3223851 Bramshill House, Bramshill, Hook RG27 0JW**

- 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 City and Country Bramshill Limited for a partial award of costs against Hart District Council.
  - The inquiry was in connection with an appeal against refusal of listed building consent for demolition of modern rear extensions and structures, erection of single storey rear extensions, repairs to exterior of buildings and internal refurbishment of Hazeley Lodges.
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## Decisions

### Application 1

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

### Application 2

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

### The submissions for City and Country Bramshill Limited

3. The applicant has sought a partial award of costs related to the aspects of the case in both appeals related to the Council's allegation of deliberate neglect to the heritage assets. The application in particular related to a hole in the roof of the modern extension to the northern lodge which was allowing water ingress to the building. The application was made in writing before the Inquiry commenced and a copy of the submissions was submitted into the Inquiry on the first day, as Inquiry document APP5. The applicant further responded to the Council's response to the application, which was provided in writing before closing statements were made, in its closing submissions.

4. In brief the applicant seeks a partial award of costs on both procedural and substantive grounds. Procedurally it is contended that the Council introduced the allegation of deliberate neglect late in the day, that such an allegation was not made at the time of the determination of the applications and that the allegation was only introduced when discussions were ongoing in the production of the statement of common ground. It is further contended that the Council did not take the reasonable opportunity to withdraw the allegation, when given an opportunity to do so following a number of opportunities including following the provision of rebuttal evidence which the appellant claims fully addressed any allegations.
5. On the substantive matters the applicant suggests that deliberate neglect is a high bar and in any common understanding of the language there was no intention to wilfully allow the heritage asset to fall into disrepair and in the context of the Planning Policy Guidance (PPG) and Historic England's advice this was not cynically carried out in the hope of making consent easier to gain. The Council has not put forward a cogent case and there is no reasonable basis on which the Council could dispute the appellant's evidence. The applicant points to Historic England's 'Stop the Rot' advice and notes that none of the criteria there are met. The applicant is of the view that as the hole is in the roof of the modern extension to the north lodge, which it is common ground the demolition of which would benefit the heritage asset, it is unreasonable to conclude it would be of benefit to the applicant to allow the building to deteriorate. Moreover, the applicant's view is that its weather proofing and remedial actions to secure the building, when the issue of the hole was brought to its attention, was prompt and effective.

#### **The submissions for Hart District Council**

6. Hart District Council provided its' response to the applications in writing before closing submissions and these are provided as Inquiry document LPA5.
7. In response the Council contend that the officer responsible only became aware of the defect in the roof in August 2019 during a site visit which was after the officer report and statement of case had been prepared. At the earliest opportunity the matter was raised with the applicant in the context of discussions on the statement of common ground. The applicant had ample opportunity to respond and indeed provided a rebuttal proof, they were not therefore prejudiced.
8. The Council assert it was only after witnessing the defect that a more forensic consideration of previous documents submitted to support earlier applications and photographs from previous site visits identified that defects in the roof had previously been noted and were evident.
9. The Council relies on the case of *Meyrick v Bournemouth BC* [2015] EWHC 4045 (Admin) as to the meaning of 'deliberate neglect' and that there is not a requirement for the actions to be in the hope of making consent easier to gain, which is not within the policy wording in the National Planning Policy Framework (the Framework) but is advice in the PPG.
10. The Council suggest that the previous documents clearly illustrate that there was a roof defect in this location which was allowing water ingress and that the reports advised monitoring to be carried out, and there is no evidence that such monitoring was undertaken. The Council does not dispute that the recent

actions taken by the applicant have not been effective but is concerned that those actions were not taken sooner. The Council are of the view that being aware of the defect the applicant consciously failed to take proper care of the asset. The Council are further of the view that the factors set out in the 'Stop the Rot' advice may be relevant to some cases but are not the only way of establishing deliberate neglect.

## **Reasons**

11. 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.
12. In my appeal decision I have concluded that there was not a case made out that deliberate neglect had occurred. Costs awards do not of necessity follow the outcome of the appeal but they need to be integrally consistent. In this application therefore my focus is on whether the Council behaved unreasonably in raising the issue, both in timing and whether there was sufficient evidence for it to reasonably do so, before considering whether this resulted in unnecessary or wasted expense by the applicant, if it were unreasonable.
13. That there is a hole in the roof of the modern extension to the north lodge is not a matter that is disputed. The Council officer's report did include reference to the issue of deliberate neglect but did not reach a conclusive position. The Council note that the officer responsible only became aware of the hole in the roof after a visit of the case officer in August 2019. When this was raised City and Country responded by securing the building with weather proofing and this has subsequently been monitored and adjusted. These actions are reasonable and appropriate and do not demonstrate deliberate neglect nor unreasonable behaviour by the Council.
14. City and Country Bramshill Ltd purchased the property in 2014 and submitted proposals in respect of the Lodges in 2015, supported by a Heritage Assessment and Design and Access Statement, albeit these applications were subsequently withdrawn. Those reports reference water ingress in the roof of the modern extension, however the level of detail in the reports does not suggest that there was a hole and reference is made to the junction of the roof and the wing walls. The existing hole is at the junction of the modern extension and the older single storey element of the building. There is therefore the potential that they are not referencing the same location albeit that these are not dissimilar locations. I also accept that with movement poor construction and the nature of such junctions this could be the result of constructional detail failure rather than evidence of a hole in the roof.
15. The Council have pointed to photographs from the Council's heritage officer which appear to show water penetration and staining on the floor at the threshold between the modern extension and the historic part of the building as well as a roof defect which could be the hole in the roof.
16. The reports submitted with the earlier applications make reference to monitoring of the buildings' condition which suggests a concern that there is potential for the deteriorating state to have an adverse effect on the building.
17. The evidence either way is inconclusive and there is no clear evidence directly identifying a hole or that specific actions were required to address it at that

- stage. On further consideration of these matters and given the later issues that became apparent it is not unreasonable for the Council to raise the issue and satisfy itself as to the nature and detail of the issue and the actions taken to address it.
18. The question then is whether the timing of the issue was of itself unreasonable. There is evidence that was before both parties that there was a potential that there was an issue. The Council did not fully appreciate the extent and nature of the issue until August at which point it raised the matter. However, the evidence upon which it now relies was in its possession earlier and it could have sought to explore the matter at the stage, even if the previous application had been withdrawn. It is not however just for the Council to address such matters, as responsible custodians it is incumbent on the owner to ensure that the building is not being neglected.
19. City and Country Bramshill Ltd would have been aware that in the committee report in respect of these appeals the Council had considered the issue of deliberate neglect and not concluded on the matter. Although it was not raised as an issue in the reasons for refusal it was an issue that was a matter in the consideration of the applications. The parties addressed the matter in the statement of common ground and the issue is addressed in both parties' evidence submitted to the Inquiry in the proofs. The appellant was afforded the opportunity to provide further rebuttal evidence which they did. I am satisfied that no party was prejudiced and that ample opportunity was afforded to the parties to address a matter which I needed to consider in the appeals.
20. As noted earlier whilst I have concluded that the case for deliberate neglect was not made out, and is a high bar, it was not unreasonable for the Council to raise the issue and for the matter to be the subject of detailed evidence. It was only on the basis of this evidence that I have been able to reach my conclusions. The appellant as a reasonable and responsible owner would, and should, have been aware of issues with the building. They confirmed in oral evidence that they have an on-site presence for the management of the site and buildings. Much of the deteriorated state of the building is due to the fact it is not occupied and has not been so for a considerable period of time. This lack of occupation has potential for issues arising. The Council were not unreasonable in raising these issues with the applicant and whilst there may have been opportunities for the Council to raise the matter earlier that does not absolve the responsibility of the owner.
21. Overall, I am satisfied that the Council did not act unreasonably in raising the issue of deliberate neglect, and that it was not unreasonable for it to do so in the context of the determination of and through this appeal process. Given that I have concluded that there has been no unreasonable behaviour it follows that the applicant did not incur unnecessary and wasted expense in seeking to address the matter through the appeal process.
22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Kenneth Stone*

INSPECTOR