
Costs Decision

Site visit made on 20 November 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Costs application in relation to Appeal Ref: APP/V5570/Y/19/3235464 Flat 3, 15 Great Percy Street, Islington, London WC1X 9RD

- 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 Mr Paul Gillooly for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of listed building consent for internal refurbishment with minor layout reconfiguration. 2no. single storey extensions.
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Decision

1. The application for costs is refused.

Procedural Matter

2. The listed building consent (LBC) appeal was linked with an appeal against a refusal of planning permission for the same proposal.¹ However, the application for costs relates solely to the LBC appeal.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.²
4. It is also confirmed in the PPG that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.³
5. The substance of the applicant's case relates to the wording of the Council's decision notice, which states: *'The proposed works by virtue of their unsympathetic design would adversely affect the character and special architectural and historic interest of the New River Conservation Area. The works would, therefore, cause harm to the significance of the heritage asset...'*
6. Applications for listed building consent must be considered on the basis of s.16(2) Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) which indicates that the decision maker *'shall have special regard to the*

¹ APP/V5570/W/3235464

² Paragraph: 030 Reference ID: 16-030-20140306

³ Paragraph: 033 Reference ID: 16-033-20140306

desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

7. As the Council's reason for refusal did not refer to the listed building but rather to the conservation area, the applicant alleges that the listed building consent application was refused on an incorrect basis. The applicant cites the fifth bullet point, within a non-exhaustive list of the types of behaviour that may give rise to a substantive award of costs against a local planning authority detailed in the PPG,⁴ which refers to: '*acting contrary to, or not following, well-established case law.*'
8. The applicant alleges that the Council should have been aware of the relevant criteria in the Act and, also referring to parts of the Council Officer's Delegated Report, asserts that: '*It is clear from the facts of this case that the Council has no objection to the proposed works in terms of the preservation of the listed building and that the only option open to the Council in relation to the application for listed building consent was to grant consent, either conditionally or unconditionally.*' As the Council refused consent, allegedly on an incorrect basis, the applicant maintains that the Council has acted unreasonably and caused the applicant unnecessary and wasted expense in having to submit the appeal.
9. For its part, the Council has since accepted that there was an error in the wording of the reason for refusal in the listed building consent decision notice, in that the New River Conservation Area was referred to instead of the listed building. However, while the applicant questions the validity of the decision notice on that basis, the notice states that it is a refusal and the applicant has apparently accepted that in lodging an appeal against the refusal. The merits of the case are discussed in some detail within the main appeal decision and there would be no purposed in my repeating them here.
10. With regard to the wording of the decision notice, it uses the language of s.16(2) of the Act in relation to listed buildings, by referring to '*special architectural and historic interest*'. The Council Officer's Delegated Report (DR), which dealt with the LBC and the accompanying planning application together, a common practice notwithstanding the different tests and statutory framework, refers in paragraph 17 to the relevant test to be applied to listed buildings.
11. Moreover, paragraph 21 of the DR, which concludes the evaluation of the 'Conservation and Design' elements of the proposal, states, with reference to the side extension that '*...the proposed works would adversely affect the special architectural and historic interest of the listed building.*' It is legitimate to consider extrinsic or supporting evidence or documentation in interpreting the decision. Therefore, on balance, I consider that, notwithstanding the error by omission in the reason for refusal, the supporting DR sufficiently confirms that the Council was aware of the relevant legal tests and applied them in its assessment
12. The DR could have more clearly differentiated its assessment of the effects on the character and appearance of the conservation area from those on the special interest of the listed terrace. However, while there was an error in the decision notice, given it was a refusal and the overall content of the supporting

⁴ Paragraph: 049 Reference ID: 16-049-20140306

DR, I do not consider that the applicant could reasonably have come away with the view that the Council had no objection to the proposed works in relation to the preservation of the listed building.

13. In its response to the application for costs, the Council also refers to the recent planning history of the site, which includes planning permission and listed building consent (the approved scheme)⁵ for a single storey side extension of a similar scale to that which features in the appeal proposal. The main difference is that the external facing material in the approved scheme is stock brick whereas the current appeal proposal is for largely timber elevations.
14. The Council explains that the previous approved scheme was revised through negotiation during the course of the planning process and that, originally, it consisted of proposals similar to the current appeal proposals. However, the materials for the west porch extension were changed from timber to brick and the second east terrace extension was omitted before the applications were approved. The revisions were, in part, in response to concerns about the effect of the side extension on the special architectural and historic interest of the listed building.
15. According to the Council, the applications which are the subject of this appeal are essentially a reversion to that original scheme, with the same agent acting, which has not been disputed. Therefore, it is reasonable to consider that the appellant, as advised by his agent, would have been aware of that process and the deciding factors. That recent planning history does provide a context which is relevant to the main appeals. It supports the view that there is not likely to have been a genuine misunderstanding, based purely on the wording of the decision notice relating to the listed building application, about whether the Council considered there would be harm to the listed building.
16. Moreover, both the DR and the clarification and elaboration provided in the Council's statement of case, sufficiently explain the Council's concerns about the negative effect on the listed building. In that overall context, I cannot see that the applicant has been prejudiced by the Council's approach, albeit that the omission in the listed building consent decision notice is regrettable.

Conclusion

17. I therefore find, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, no award of costs is made.

JP Tudor

INSPECTOR

⁵ Refs: P2018/4285/FUL and P2019/0057/LBC – both approved on 25 March 2019