
Costs Decision

Site visit made on 18 December 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2020

Costs application in relation to Appeal Ref: APP/Q1445/Y/19/3229749 Marlborough House, 54 Old Steine, Brighton BN1 1NH

- 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 David Squair, RDF Group, for a full award of costs against Brighton & Hove City Council.
 - The appeal was against the refusal of listed building consent for bird spikes on the raking cornices of the pediments and on the parapet of the front elevation.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The applicant seeks a substantive award of costs on the basis that consent should have been granted. He claims that photographs showed the corrosive effect of bird fouling on the paint and limestone of the building; that the Council could have requested further evidence of harm; that anti-perching spikes have already been fitted onto the ridge of the roof; and that numerous historic buildings in Brighton have been fitted with similar systems.
 4. While I allowed the appeal, I shared the conclusion of the Council that there had been some harm to the building's appearance. However, unlike the Council, I found that the public benefits of the works outweighed that harm.
 5. The public benefit was attributed to the prevention of harm to the listed building. Yet there was very little substantive evidence of the previous harm or risk of future harm to either the building's fabric or its appearance. I agree that a call from the Council might have elicited more evidence about the previous fouling and risk of it recurring and its effects. Equally though, were this covered in greater detail in the heritage statement, then the issue may not have arisen.
 6. Indeed, it was only the building's location, its context, and the evidence of perching and the fouling effect on neighbouring parapets which allowed me to attribute the requisite weight for the harm to appearance from spikes to outweigh that from discolouration and fouling.
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7. The Council has advised that the anti-perch spikes on the ridge of the roof do not have listed building consent. They did not justify the spikes in this location as those are, in my view, in a quite different and less prominent location, with a different background condition. The examples of spikes on other historic buildings did not justify their application here as the individual circumstances of each building and location determine their effect on significance and special interest.
8. Therefore, while I understand the applicant's frustration, the authority's actions do not constitute unreasonable behaviour. Unnecessary or wasted expense, as described in the PPG has not therefore been caused.

Conclusion

9. For these reasons, and having regard to all other matters raised, an award for costs is not justified.

Patrick Whelan

INSPECTOR