

Costs Decision

Site visit made on 20 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 6 February 2020

Costs application in relation to 65 Newland Street, Witham CM8 1AB

Appeal A Ref: APP/Z1510/W/19/3239689

Appeal B Ref: APP/Z1510/Y/19/3239691

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, 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 Dyer MacKay Developments for a partial award of costs against Braintree District Council.
 - The appeals were against the refusal of planning permission and listed building consent for the demolition of a modern stairwell, change of use from office to residential use to provide a single, 2-bedroom dwelling, conversion of the rear extension and erection of a 2-storey extension to provide two 1-bedroom flats, formation of a courtyard to form amenity space and cycle parking.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

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. Paragraph 49 of the Guidance sets out examples of behaviour that might give rise to a substantive award of costs against a Local Planning Authority. For substantive matters, the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this are given in the PPG and include failure to produce evidence to substantiate each reason for refusal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 4. The applicant claims that the Council was unreasonable in refusing the application for planning permission as far as it related to heritage matters, and for refusing the application for listed building consent. He claims that the Council's position was at odds with the heritage advice it received, and it did not weigh the public benefits of the proposal against what it identified as less than substantial harm.
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5. The Council found that the proposal would be a contrived and cramped form of overdevelopment of the site. However, it did not substantiate the reasoning behind that conclusion, or explain the effect of this on the significance of the listed building or the conservation area.
6. It rightly identified that the National Planning Policy Framework indicates that account should be taken of the desirability of new development making a positive contribution to local character and distinctiveness. The applicant claimed the proposal would have a positive effect at the front and back of the building. The County Council's consultant's advice was that while the building proposed for conversion made a negative contribution to the CA and the setting of the listed building, and while he lamented the retention of part of the building, there would be no additional harm to the significance of the listed building or the CA from the change of use. He also identified the proposed link and extension as an improvement on what was in-situ, and the alterations to the front of the listed building, as positive interventions.
7. Despite this advice, the Council concluded that there was no positive contribution. While the Council is not bound to follow the advice it receives, not to demonstrate how it reached the alternative conclusion, is unreasonable. The Council properly weighed the public benefits of the proposal against what it found to be less than substantial harm. However, it is not clear how, having found firstly that the proposal would *not* exacerbate the less than substantial harm it said already existed, it can then rationally conclude that there would be less than substantial harm.
8. The Council has not substantiated the unfounded heritage reasons for refusing these applications. Moreover, the objective analysis it did receive on the heritage aspects, it rejected, and without any justification of its alternative conclusion. This amounts to unreasonable behaviour which has led to the unnecessary expense of the appeals, in relation to their heritage matters.

Costs Order

9. 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 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Braintree District Council shall pay to Dyer MacKay Developments the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the preparation of evidence in respect of the reason for refusal of the planning application concerning designated heritage assets and in respect of the refusal of listed building consent; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Braintree 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.

Patrick Whelan

INSPECTOR