



---

## Costs Decision

Site visit made on 10 July 2020

**by Thomas Bristow BA MSc MRTPI AssocRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 August 2020**

---

### **Costs application in relation to Appeal Ref: APP/P1133/Y/19/3243944 1 St. Scholastica's, the Priest's House, Dawlish Road, Teignmouth TQ14 8FF**

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972 as amended, section 250(5) (as applied via section 89 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended).
  - The application is made by Dr. Melanie Lee for a full award of costs against Teignbridge District Council.
  - The appeal was against the refusal of Teignbridge District Council to grant listed building consent for proposed works described on the application form supporting application Ref 19/01152/LBC, dated 10 June 2019, as 'internal reconfiguration and refurbishment of the already altered interior and the further conversion of the roof space to provide further accommodation.'
- 

### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.<sup>1</sup> Costs applications may relate to events, if not expenses incurred, before an appeal was brought.<sup>2</sup>
3. The appellant's case for a full award of costs is on both procedural and substantive grounds, related to the Council's approach in respect of application Ref 19/01152/LBC for various alterations to the Priest's House (the 'current scheme'), part of Grade II Listed St. Scholastica's Abbey.
4. Procedurally the appellant argues that the Council actively avoided constructive engagement, thereby preventing a mutually-agreeable scheme being arrived at. She further contends that the Council have acted in a way which was 'deliberately obstructive' and which has felt both threatening and stressful. Substantively she avers, in part by consequence of the above, that the Council's opposition to the scheme was unsubstantiated.
5. I acknowledge that the planning history to the Priest's House, as set out in the appeal to which this costs application relates,<sup>3</sup> will inevitably have informed the

---

<sup>1</sup> Reference ID: 16-028-20140306.

<sup>2</sup> PPG Reference ID: 16-032-20140306.

<sup>3</sup> In particular at paragraphs 5 and 6.

Council's and appellant's position in respect of the current scheme (in all likelihood both factually and perceptively). However even were I to accept that the Council acted unreasonably in respect of applications, discussions and actions before appeal Ref APP/P113/Y/19/3243944 was made, and unrelated to it, I could not award costs in those respects.<sup>4</sup>

6. Planning is often emotive, and I can appreciate how enforcement action, or the potential thereof, may be perceived as threatening or stressful. However awards of costs cannot extend to compensation for indirect losses,<sup>5</sup> which in my view encompasses disruption resulting from what might be termed the psychological reaction to planning procedures in this instance. I also note in both instances of which I have been made aware, enforcement proceedings considered by the Council related to unauthorised works.<sup>6</sup>
7. Of relevance to the contention that the Council acted in a deliberately obstructive manner over time, I understand that a complaint has been made to the Council. Allegations of maladministration are, ultimately, for the Local Government Ombudsman to assess. Whilst maladministration may have a bearing on the course that a specific planning proposal or listed building application has taken, it is not within of my remit to establish whether or not that has occurred.
8. With that in mind, the PPG gives, as an example of a type of behaviour that may give rise to an award of costs against a local planning authority 'refusing to enter into pre-application discussions... where a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed...'.<sup>7</sup> Whilst I accept that the appellant's view on the acceptability of the current scheme differs from that of the Council, the Council have nevertheless set out that they provided pre-application advice in respect of proposed works to the Priest's House on two occasions (and also assessed proposed works to the property in 2018 in the context of application Ref 18/00562/LBC).
9. Paragraphs 38 and 39 of the National Planning Policy Framework ('NPPF') set out how local authorities should approach decisions on proposed development in a positive and creative way, and that early engagement 'has significant potential to improve the efficiency and effectiveness of the planning application system for all parties'. Albeit that application 18/01152/LBC was for listed building consent, neither NPPF paragraphs 38 and 39 go as far as suggesting that any scheme may be rendered mutually-acceptable to both applicant and Council through engagement.
10. There is correspondence of 24 August 2019 from the appellant's agent to the Council before me, which is argued to represent the Council's 'adamant refusal to enter into basic communication with respect to procedural matters' and to attest to delays in determination. I accept that a period of around sixteen

---

<sup>4</sup> As set out in PPG Reference ID: 16-032-20140306.

<sup>5</sup> Ibid.

<sup>6</sup> As set out in paragraph 6 of the associated appeal decision in respect of an outbuilding associated with the Priest's House, the design of which differed from that originally approved in 1992 (to which approval Ref 92/00431/AMD1 relates), and in respect of internal works including the removal of a partition wall (which was absent at the time of my site visit).

<sup>7</sup> Reference ID: 16-049-20140306.

weeks elapsed between application Ref 19/01152/LBC and the date on which the Council reached a decision.<sup>8</sup>

11. I have, however, only one side of that exchange. I also note that references are made in the correspondence of 24 August to administrative and resourcing reasons for delays, and to the potential agreement of an extension of time for determination.<sup>9</sup> Whilst I can appreciate some frustration on the part of the appellant, it appears on that basis that the appellant was provided with a frank explanation of why delays occurred.<sup>10</sup> Delays may, of course, occur on account of unforeseen circumstances rather than by conscious design; there is no robust evidence before me to substantiate that the latter occurred in this instance.
12. Turning to the appellant's substantive grounds for an award of costs, I have reasoned in the associated appeal that certain elements of the current scheme would not be unacceptable. However, as I also concluded that it has not been demonstrated that the current scheme would preserve the Listed Building, I cannot rationally support the appellant's position that the Council acted unreasonably in preventing works that should clearly have been consented.<sup>11</sup>
13. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the '1990 Act') sets out 'in considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. Similarly the NPPF sets out how great weight should be accorded to the conservation of designated heritage assets, including listed buildings, irreplaceable resources, and that any harm should require 'clear and convincing' justification.<sup>12</sup>
14. In that context, it is a matter of fact that the current scheme proposes changes to the Priest's House that would affect its external appearance, alter internal arrangements, and entail the loss of historic fabric. I have also reasoned in the associated appeal decision how there are various ambiguities and shortcomings with the plans and evidence supporting application Ref 19/01152/LBC which, allied to alterations to the property already undertaken, complicate a clear understanding of the extent of the proposal (and, by extension, of the magnitude of any harm that may result).<sup>13</sup> Whilst the appellant has clarified certain aspects of her intentions regarding the proposed works, as reasoned in the appeal decision that cannot legitimately substitute for a precisely defined proposal.
15. On account of the foregoing reasoning, the crux of the appellant's application for costs distils down to a difference of opinion regarding the merits of the

---

<sup>8</sup> Eight weeks being the statutory timeframe specified in Regulation 3 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 as amended.

<sup>9</sup> In a similar manner to allegations of maladministration referenced above, allegations against an individual's professional conduct (referenced in the correspondence of 24 August) are within the remit of the relevant professional body.

<sup>10</sup> Noting PPG Reference ID: 16-048-20140306.

<sup>11</sup> Noting PPG Reference ID: 16-049-20140306, the appellant's position being that 'the special interest of the property would not be affected, except positively'.

<sup>12</sup> Paragraphs 184, 193 and 194.

<sup>13</sup> Including in respect of the treatment of the chimney stack at the Priest's House, which is a matter of concern raised in the Council's officer report associated with application Ref 19/01152/LBC.

current scheme.<sup>14</sup> That is inherently a matter of judgement. The Council's officer report associated with application Ref 19/01152/LBC sets out various accurate observations as regards the Priest's House and the implications of the current scheme,<sup>15</sup> includes reasoning regarding potential public benefits to the proposal, and considers relevant provisions of statute, of the National Planning Policy Framework and of the development plan.

16. On account of the foregoing reasoning, although I understand the appellant's evident frustration with her perception of the Council's approach, insofar as relevant to this costs application, based on all the evidence before me I find that no action or inaction taken by the Council amounts to unreasonable behaviour directly resulting in unnecessary or wasted expense at appeal.

### **Conclusion**

17. Having taken account of all other matters raised, and with regard to relevant elements of the PPG, for the above reasons I conclude that an award of costs is not justified in this instance.

*Thomas Bristow*  
INSPECTOR

---

<sup>14</sup> As acknowledge in the appellant's response to the Council's costs rebuttal, which states that the proposal is 'justified upon as much basis of fact as is practicably possible with respect to what are largely subjective matters that are in turn necessarily subject to interpretation'.

<sup>15</sup> Albeit I have reasoned in the associated appeal that, in certain respects, conditions could mitigate the effects of certain elements of the current scheme (see paragraph 24 in particular).