

Costs Decision

Site visit made on 19 August 2020

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2020

Costs application in relation to Appeal Ref: APP/X5990/W/19/3243299 Flat 6, 74 Portland Place, London W1B 1NR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Michael Goletka for a full award of costs against City of Westminster Council.
 - The appeal was against the refusal of planning permission for alterations to provide new lantern enclosure and balustrades associated with the use of roof as a terrace (Flat 6).
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Decision

1. The application for an award of costs is partially allowed in the terms below.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant states that the appeal was unnecessary because the Council demonstrated the following examples of unreasonable behaviour, as set out in paragraphs 47 and 49 of the PPG:
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - providing information that is shown to be manifestly inaccurate or untrue; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - acting contrary to, or not following, well-established case law; and
 - lack of co-operation with the other party; and refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
4. It will be seen from my appeal decision that I disagree with the Council with regard to the sole reason for refusal relating to the impact of the proposed development on the host building and the conservation area. Even so, this is a matter of planning judgement and the Council was not unreasonable in coming to the conclusion that it did, so long as it is able to adequately substantiate its reasoning. The Council have provided a detailed reason for refusal taking into account the location, height, bulk and detailed design of the proposal and its impact upon the building and the conservation area. Furthermore, the Council's

appeal statement expands upon that reason, with respect to visibility, illumination and the completed composition of the building. Together, these have adequately substantiated the reason for refusal, notwithstanding the applicant's concerns regarding lack of specific details.

5. The Council has subsequently acknowledged that it made errors of fact in its appeal statement, relating to siting of the proposed balustrades and visibility from longer public views from street level. Such errors are careless and are clearly and rightly a source of frustration to the applicant. Whilst the Council has apologised for its mistake in its costs response, the applicant had already had to spend time responding to these matters which, whilst not expansive, was unnecessary. Accordingly, as the Council provided information during the appeal process that was inaccurate, to which the applicant was forced to respond, this represents unreasonable behaviour that has directly caused the applicant to incur wasted expense.
6. According to the applicant, the Council failed to acknowledge that the principle of the development was acceptable, thereby acting unreasonably in controlling use of the terrace and provision of access arrangements. The wording of the delegated report, reason for refusal, and informative could potentially be interpreted in different ways. However, the Council acknowledged lawful use to the applicant's agent during a site visit and email correspondence confirms likewise, both prior to determination of the application. Furthermore, the Council's appeal statement makes it quite clear that this matter is not contested. Therefore, I am not persuaded that the Council objected to the principle of development so much as objected to the principle of such a design approach in this location being unacceptable.
7. The applicant also considers that the Council unreasonably applied weight to matters outside of planning control, with regard to furniture and planters. Whilst the Council's delegated report and appeal statement both refer to such items being alien to the architecture of the building and the character of the conservation area, the wording of such is conjoined with the impacts of parts of the appeal proposal that do require planning permission. Furthermore, the effect of furniture and planters is not reflected in the formal reason for refusal. As such, it does not appear to me that the Council are relying on this matter to support their case. Accordingly, it has not been demonstrated that the Council acted contrary to, or did not follow, well-established case law.
8. The applicant suggests that the Council have been unwilling to engage in any discussion on matters of design, citing correspondence stating that, even with modification to the detailed design, the proposal would be unacceptable. Other Council correspondence suggests there may be scope to enter into further discussions on design, but this is post-decision. Nonetheless, whilst I disagree with the Council's decision on the proposal, it is not unreasonable for it to cease discussion on proposals that it sees no realistic opportunity to amend.
9. Overall, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

10. 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 as amended,

and all other enabling powers in that behalf, IT IS HEREBY ORDERED that City of Westminster Council shall pay to Michael Goletka, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's claim relating to the siting of balustrades and visibility from longer public views from street level; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to City of Westminster 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 Hanna

INSPECTOR