



Costs Decision

Site visit made on 5 January 2021

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 May 2021

Costs application in relation to Appeal Ref: APP/U1105/F/20/3258749 Court Place Cottage at Court Place Farm, Wilmington, Honiton, EX14 9LA

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Steve and Caroline Broom for a full award of costs against East Devon District Council.
 - The appeal was against a listed building enforcement notice alleging the replacement of 3 windows and a door.
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Decision

1. The application for an award of costs succeeds in part.

Procedural Matter

2. Following my assessment of the listable quality of the building as part of my consideration of the ground (a) appeal against the listed building enforcement notice, the Secretary of State for Digital, Culture, Media and Sport was requested to consider de-listing the building, the consequence of which is that the building has now been removed from the statutory list. As it is no longer a listed building, the enforcement notice is of no effect. However, that decision does not affect relevant considerations relating to this application for costs.

Reasons

3. The Planning Practice Guidance advises that 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.
4. The appellants believe that the Council has been unreasonable in pursuing enforcement action leading to unnecessary expenditure through having to appeal against the notice. The application for costs is on the basis of three points.
5. Firstly, the appellants claim that action was not properly informed by a reasonable consideration of the evidence as required by Paragraph 190 of the National Planning Policy Framework. They consider that at no point has the Council explained why the property should remain on the list either through evidence or expertise. In response the Council indicates that the appellants were fully aware that the building was Grade II listed when the unauthorised works were carried out and that works affecting the character of the building is a criminal offence without first obtaining consent.

6. Secondly, the appellants consider that the requirements are onerous in terms of cost and seek enhancement of the listed building where the legal requirement is to put the building back to the state it was in before the works were carried out. In response, the Council refers to Historic England's advice on the replacement of windows but they fail to address the legal requirement.
7. Thirdly, the Council has been unwilling to explore alternative, reasonable, lower cost routes to remedy the situation. The Council, however, considers that there has been considerable deliberation and discussion between the parties and refer to emails in respect of their consideration of de-listing and options for the appellants.
8. In my appraisal of the submissions of the parties, my starting point is to acknowledge that the appellants were aware of the listed status of the building at the time the unauthorised work was carried out. Additionally, I note that an application for listed building consent for the unauthorised works and the replacement of the remaining windows was submitted, albeit that it was subsequently refused. I also note that the appellants submitted a request to Historic England for the de-listing of the building but as the Council had resolved to take enforcement action, Historic England declined to proceed with the application. This placed the appellants in a "Catch 22" situation. On one hand Historic England would not proceed with a de-listing request and on the other hand, the Council reminded the applicants that it was for Historic England to consider de-listing and not the Council, nor would the Council withdraw the enforcement action to allow the de-listing application to proceed.
9. The Council provided verbal advice to the appellants prior to the application for listed building consent essentially stating that PVCu windows were unacceptable and that they should be replaced with heritage timber frames and glazing. This advice was not taken and the application was refused on heritage grounds. Interestingly the Council considered that the proposed replacements would *"contribute further to the harm previously incurred by alterations and extensions carried out in the 1980's."* However, I note that the harm incurred was carried out with the benefit of listed building consent and that the Council's Conservation Officer recognised that as a result of the changes to the building it may no longer be of listable quality.
10. It appears that the Council adopted a procedurally correct approach in respect of the unauthorised works but they chose not to respond positively to the appellants' request to resolve the matter by way of an alternative approach. Whilst it is laudable that the Council sought to enhance the building through the replacement of unsatisfactory windows with those of a heritage standard, it is possible that a position was established which did not take into account the limitations of what was legally possible through the requirements of the notice. In the absence of an owner being prepared to pursue a heritage solution due to costs or other reasons, the Council's approach to the issue of expediency in pursuing enforcement action is unclear, other than to the fact that a contravention had taken place.
11. The Council has met obligations in respect of their legal duty regarding the listed building and were seeking to secure a positive outcome in the light of advice from Historic England. Additionally, their task, along with that of other parties, has been made more difficult as a consequence of the restrictions on normal working routines through the Covid pandemic. However, whilst another

authority may have adopted a different approach and exercised any discretion in respect of expediency in a different manner, it does not necessarily follow that the Council has behaved unreasonably in the context of the Guidance to warrant a full award of costs. Furthermore, I am not convinced by the appellants' criticism of the Council that it has not had regard to Paragraph 190 of the Framework. However, in their pursuance of replacement windows that met a heritage specification, they have been unreasonable through exceeding the legal requirement to put the building back to the state it was in before the works were carried out, and this has led to some additional expense by the appellants.

Conclusions

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the requirements of the notice and that a partial award of costs is justified.

Costs Order

13. 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 East Devon District Council shall pay to Mr and Mrs Steve and Caroline Broom, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred appealing against Requirements IV and VI in the Enforcement Notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to East Devon 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.

PN Jarratt

Inspector