
Costs Decisions

Hearing (Virtual) Held on 22 June 2021

Site visit made on 23 June 2021

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 July 2021

Costs application A in relation to Appeal Ref: APP/X5990/W/20/3244571 48 Marlborough Place, London NW8 0PL

- 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 Mr and Mrs Richard Laxer for a partial award of costs against City of Westminster Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for repairs and alterations to the front boundary wall with the introduction of railings to provide an off street car parking space, soft landscaping with associated works.
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Costs application B in relation to Appeal Ref: APP/X5990/Y/20/3244570 48 Marlborough Place, London NW8 0PL

- 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 and Mrs Richard Laxer for a partial award of costs against City of Westminster Council.
 - The hearing was against the refusal of listed building consent for repairs and alterations to the front boundary wall with the introduction of railings to provide an off street car parking space, soft landscaping with associated works.
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Decision A

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

Decision B

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

Preliminary Matter

3. The applications have been submitted on the same grounds for both appeals. The appeals relate to the same proposal under different legislation. I have dealt with both applications together in my reasoning.

The submissions for Mr and Mrs Laxer

4. The costs applications were submitted in writing. The following additional point was made orally at the hearing.
5. The appellants suggested that they had little choice but to carry out further investigative work on site in response to the Council's dissatisfaction of the appellant's understanding of the tree environment.

The response by City of Westminster Council.

6. The Council's response was made in writing. The following additional points were made orally at the hearing.
7. All trials carried out were voluntary. The second set of investigations were carried out in response to a question from the Council about contradictions between the initial trial pit and root scan results.
8. The Area Design and Conservation Officer confirmed that he visited the site and knows the area well having worked for the Council for a long time.

Reasons

9. The Planning Practice Guidance¹ advises that, irrespective of the outcome of an 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.
10. The appellants submit that the Council failed to accommodate a site visit or a meeting to discuss the proposal before it made its decision, and that such a meeting would have allowed for an assessment of the wall condition and open discussion about the merits of the proposal. Evidence before me demonstrates that Council Officers visited the site and had a good understanding of its characteristics and context at the time it made its decision. I am not satisfied that a further site visit or meeting would have resulted in a different outcome, or that the absence of such constitutes unreasonable behaviour.
11. Although the 2003 appeal decision is referred to by the Council in its officer report, there is nothing before me to demonstrate that it did not take into account changes that had taken place between 2003 and the time it made its decision.
12. The appellants are of the view that the Council used the wrong measurement for the length of the existing parking bay, by relying on GIS data rather than undertaking a measurement on site. Relying on such data does not appear to be unreasonable and in any case this matter does not appear to be material to the disagreement between the parties regarding the number of vehicles that can be accommodated within the existing parking bay.
13. The appellants submit that the extent of evidence required relating to the proposal's impact on existing trees was unreasonable, given the small scale of the proposal. It is also suggested that the investigations carried out resulted in some root loss.
14. It is clear that there were some discrepancies between the initial site investigations, which the Council highlighted. Although I am mindful of the appellants' view that they had no choice but to carry out further investigative work based on the feedback received, there is no evidence before me to show that the Council required specific work. Furthermore, although the proposal would be of a small scale, it would include a formalised area of hardstanding that would be close to existing trees, and well within root protection areas. In this respect I am satisfied that the level of understanding that the Council considered necessary was not unreasonable.

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

15. Further concern from the appellants suggest that the Council failed to take into account all the evidence presented relating to tree impacts. However, it is clear from the evidence before me that everything submitted was reviewed by the Council before it made its decision.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that an award of costs is not justified.

A Tucker

INSPECTOR