
Costs Decision

Site visit made on 4 May 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Costs application in relation to Appeal Ref: APP/R0660/F/21/3267447 Avenue Lodge, London Road, Doddington, Cheshire CW5 7NJ

- 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 Lady Rona Delves Broughton of the Doddington Estate for a full award of costs against Cheshire East Council.
 - The appeal was against an enforcement notice alleging the alteration and extension of the building which has an adverse impact on its architectural character including the installation of eight plastic material double glazed windows.
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Decision

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

Reasons

2. 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. Local authorities are at risk of an award of costs if they behave unreasonably with respect to the actual substance of the matter under appeal, or by unreasonably defending appeals. Examples include preventing or delaying development that should clearly be permitted, by failing to produce evidence to substantiate each reason for refusal on appeal, or acting contrary to, or not following established law. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In addition "unreasonable" is used in its ordinary meaning as established by the courts¹ and not in the stricter law definition of "Wednesbury" unreasonable.
4. The appellant contends that the Council behaved unreasonably in two key areas. Firstly, with reference to evidence it is argued that the Council did not carry out adequate prior investigation before issuing the Listed Building Enforcement Notice (LBEN), that it failed to take account of material evidence, that it provided unsubstantiated evidence and that general and inaccurate assertions were made regarding the effect of the unauthorised replacement windows. Secondly, it is argued that the Council has failed to evidence the former state of the windows in the property.

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

5. With reference to the evidence submitted by the appellant, the main concern is that the Council did not engage with documentation regarding Goudhurst College's lease and a statement from a former occupant of Lake Lodge which was submitted before the Council issued the LBENs in December 2020. This evidence relates to the curtilage listed status of the Lodge and was submitted by the appellant to demonstrate that it is a non-curtilage listed building. However, as set out in the main decision, in accordance with established case law there are three key tests; namely physical layout, past and present ownership and past or present use or function, which determine whether or not a building or structure is curtilage listed.
6. I have taken account of the detailed evidence submitted by the appellant and the Council and have concluded that Avenue Lodge is curtilage listed. This includes taking account of the 1967 dated lease plan and other evidence with respect to the use and function of the Lodge in relation to Doddington Hall. The Council has demonstrated that it did engage with the appellant's body of evidence and, although it appears that there was some contradictory oral evidence, determined that there were insufficient grounds to withdraw the previous LBEN (which was subsequently found to be a nullity) nor did it provide clear justification not to issue the LBEN the subject of this appeal.
7. Case law and, in particular, the *Debenhams* case² requires curtilage structures to be ancillary to the building in the listed list. The appellant contends that by failing to take account of material evidence submitted by the appellant it has failed to follow case law. With reference to the current appeal, the *Debenhams* case is of particular relevance since, with respect to use or function, 'a structure within the curtilage of the buildings' as referred to in legislation, must be restricted to "*such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage*". Therefore, it is clear to me that this test avoids the inclusion of a separate building in its own right which is not subordinate in its use or function to the listed building.
8. Furthermore, at the time of issuing the LBEN, I am satisfied that the Council was aware of, and understood, the extended definition of listed buildings through structures falling in the curtilage of the listed asset, being that "*a structure or object which is so clearly related to a listed building that its removal would adversely affect the interest of the at building, should be treated as falling within the extended definition of listed building, even if that item would not otherwise be regarded as part of, or one of the features for that building*". The Council has also clearly demonstrated by the wording of the LBEN and its evidence that the main listed building in this case is Doddington Hall, but the relationship between Avenue Lodge and the adjacent Listed Lake Lodge gates, piers and screen walls are also important.
9. At the time Doddington Hall was listed in June 1952 Avenue Lodge was within the ownership of the Doddington Estate, but it was let to a private tenant as a separate dwellinghouse. The Hall was let to Goudhurst College and therefore the Lodge was also separate in terms of its function. I have taken account of the evidence presented by the appellant and also the Council and it shows that, although there have been various tenants in Avenue Lodge, it has remained in the same ownership since well before the date it was listed. Therefore, there is

² *Debenhams plc v Westminster City Council* [1987] AC 396

- a clear link between Avenue Lodge, Doddington Hall and the Lake Lodge gates, piers and screen walls in terms of ownership.
10. I understand that there is a dispute between the main parties with reference to occupancy of the Lodge and the functional relationship between the property and the previous function of Doddington Hall, but the Council has quite correctly taken account of the evidence assembled. There is a difference of opinion between the main parties and this is not surprising in a dispute such as the one before me, but that does not mean the Council has behaved unreasonably.
 11. Consequently, I agree that Avenue Lodge should be considered in the wider context of its contribution to the special architectural or historic interest of Doddington Hall and other associated listed structures and not as a designated heritage asset in its own right.
 12. The appellant argues that the Council's selective review of evidence has resulted in misunderstanding the historic situation and the condition of the Hall and the wider surroundings and this has affected their assessment of special interest. Based on the range of evidence before me I conclude that due to its simple composition, use of traditional materials and design features throughout and close relationship with Lake Lodge and the adjacent listed structures contribute to defining it as an important building associated with the historical development of the wider estate and, in particular the changes that took place during the early part of the twentieth century.
 13. Furthermore, I have identified that the significance of a heritage asset is the sum total of its heritage values and historic windows will usually be of such significance that every effort should be made to conserve them, as most historic windows will illustrate to varying degrees the materials, technology, craftsmanship and architectural style of the period in which the building was built. The evidence before me shows that the replaced windows contributed to the character of the building and added to its interest through the use of traditional timber frames and maintained the aesthetic value of the heritage asset. I understand the appellant's points regarding the Council's evidence relating to the historical evolution of Doddington Hall, its park setting and other historic buildings in the vicinity, but do not find that the Council's assessment of the special interest and significance of the site to be unreasonable. There is clearly a difference of opinion regarding Avenue Lodge and Lake Lodge and their role in the historic development of the area. The Council also seems to place greater weight to the importance of the windows to the significance of the historic asset when compared to the appellant, but that is a matter of judgement.
 14. The appeal on ground (i) is made on the basis that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose. The evidence before me shows that in drafting the requirements of the notice the Council had regard to photographs of the Lodge and my Inspector colleague, when determining that the previous LBEN was a nullity, acknowledged that the photographs attached to the previous LBEN provide some information on the style of the previous windows.
 15. In addition, although the LBEN indicates that the requirement is to restore the building to its former state, the Council is not requiring the reinstatement of the windows and frames that were previously present but rather the restoration

of the character of the building to its former state before the replacement windows were installed and to alleviate the effect of such works which were carried out without listed building consent. The steps required by the LBEN would serve the purpose of restoring the character of the building to its former state and I do not find the Council's behaviour to be unreasonable with respect to their method of determining the requirements of the Notice.

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 a full award of costs is not justified.

A A Phillips

INSPECTOR