
Costs Decision

Hearing Held on 29 June 2021 and 30 June 2021

Site visit made on 6 July 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2021

Costs application in relation to Appeal Ref: APP/B4215/W/20/3260989 35 Demesne Road, Manchester M16 8HJ

- 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 Manchester City Council for a full award of costs against Dr Ali Roomi (Bollin Homes Ltd).
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of the property.
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Decision

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

The submissions for Manchester City Council (the Council)

2. The appellant has not worked cooperatively with the Council in discussing the application that is the subject of this appeal. The appellant's evidence at the hearing supports the Council's view that repairs to preserve the building can be carried out. As such, the demolition of the building is not justified. The appeal process has wasted the time, effort and expense of the Council in defending the appeal.

The response by Dr Ali Roomi (Bollin Homes Ltd) (the appellant)

3. The accusation of uncooperative behaviour is denied. There has been a pattern of disengagement from constructive dialogue by the Council in relation to emails and letters sent by the appellant before the application was submitted and after it was refused, and in attempts to provide a unified position in the statement of common ground as part of the appeal process.
4. Although repairs could be carried out, the reports provided by the appellant concluded that the works are complex, largely unfeasible, unsafe and unviable. The Council has not provided any similar objective appraisals of the site.
5. It is the appellant's understanding that the Council's attendance at hearings is part of its remit in dealing with planning applications and appeals, for which additional costs should not routinely be charged.

Reasons

6. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party which has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process. The PPG

advises that appellants are at risk of an award of costs for lack of co-operation with other parties in providing information or discussing the application or appeal, or if the appeal had no reasonable prospect of succeeding.

7. The application to demolish the building was submitted after the Council served a notice under section 215 of the Town and Country Planning Act 1990 (a s215 notice) in December 2018, requiring works to be carried out to the building. I have not been provided with copies of all correspondence from around that time or since. However, it is evident from an email to the Council in August 2019¹ that the appellant had a structural survey carried out after the s215 notice was served and subsequently contacted the Council to express reservations that the works required by the s215 notice would not remedy structural defects identified in that survey. In the email the appellant also expresses concerns about the implications of demolishing the adjoining property, as required by a separate s215 notice, in terms of the ongoing stability of No 35. The email also advises of the appellant's intention to apply to demolish the building and offers to provide further information.
8. It is clear from the Council's reply that it disagreed with the appellant, advising them not to proceed with an application to demolish the building but to undertake the works set out in the s215 notice. However, the fact that the appellant chose to proceed with an application to demolish does not amount to a lack of engagement or unreasonable behaviour. It is evident that the appellant commissioned a structural survey in response to the Council's s215 notice and contacted the Council to raise reservations about the practicality of carrying out the works required by the s215 notice prior to making that application.
9. I have little detail before me to indicate whether further discussions took place during the course of the application. However, it is clear from emails provided by the appellant that they sought further clarification from the Council following the refusal of the application and before submitting an appeal. The appellant provided further substantive evidence in the form of an additional detailed structural survey with the appeal, in response to the Council's reason for refusal. The appellant therefore evidently sought professional advice prior to and following the application in response to the Council's s215 notice and contacted the Council to set out their position and understand the Council's position.
10. Therefore, from all that I have seen and heard, I am not satisfied that the appellant has failed to act on correspondence received from the Council or to engage or seek advice as to a way forward. Although the parties failed to reach agreement in that regard, I do not find that there was a lack of co-operation on the part of the appellant. They evidently sought their own professional advice and contacted the Council in the light of that advice, and before proceeding with the application to demolish.
11. Furthermore, based on the appellant's submissions including detailed structural evidence, I have concluded that the proposed demolition is justified. Therefore, the appellant has not pursued an appeal which had no reasonable prospect of succeeding or thus behaved unreasonably in that regard. Accordingly, it follows that the Council has not been put to unnecessary or wasted expense in defending the appeal.

¹ Appendix 1 of the Council's Statement of Case

Conclusion

12. For the reasons given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated in this case.

Jillian Rann

INSPECTOR