



Costs Decision

Site visit made on 26 July 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 07 September 2021

Costs application in relation to Appeal Ref: APP/U5360/F/20/3265672 34 Bethune Road, Hackney, London N16 5BD

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 39, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S Rand of Rovergrange Ltd for a full award of costs against the Council of the London Borough of Hackney.
 - The appeal was against a listed building enforcement notice alleging the installation of sliding doors and boiler flue and the removal of chimney breasts.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The applicant considers that the Council has acted unreasonably by its failure to enter into negotiations during the retrospective consent application, and by serving the enforcement notice with punitive measures, which led to an appeal and its related unnecessary expense.
3. The applicant sets out in some detail the reasons why the works were completed without consent and the actions taken subsequently by the architects in order to bring about an outcome that was agreeable to both parties. It is argued that the Council did not carry out an appropriate site visit, made misguided assumptions and failed to take proper account of the applicant's personal circumstances. In addition, the requirements to remove the boiler and boiler flue would have left the property without heating or hot water, which is wholly unreasonable.
4. I understand the Council had formed an opinion after an initial site visit and it was felt that further discussions would not be productive. I appreciate that this stance was frustrating, especially as the applicant was seeking to provide further information with the intention of addressing the Council's concerns. However, the Council had clearly reached an uncompromising position, which it maintained on appeal. Although I subsequently disagreed with the Council, I do not consider that their arguments were wholly without merit. Discussions before and during an application process can be helpful and are often encouraged, but in this case, it was considered that a compromise could not be reached. I do not consider the Council has shown a lack of cooperation, therefore, as it made its position clear at the outset.

5. The Council argues that it discharged the Public Sector Equality Duty¹ taking full account of the applicant's circumstances. As a result, an extended compliance period was allowed. I can see from the officer's delegated report that the matter was properly considered and consideration of the equality issues influenced the decision reached by the Council.
6. I understand the requirement to remove the boiler arose from an expectation by the Council that the flue would be relocated, possibly to the rear of the building. This may have necessitated the re-positioning of the boiler. In my opinion requirement (2) was excessive but, in itself, its inclusion does not amount to unreasonable behaviour. Also, it is not apparent that the appeal could have been avoided had the Council been clearer in its drafting of this particular requirement.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Debbie Moore

Inspector

¹ Section 149(1) of the Equality Act 2010.