
Costs Decision

Hearing held on 6 July 2021

Site visit made on 7 July 2021

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04th October 2021

Costs application in relation to Appeal Ref: APP/N5090/F/20/3265178 Land at 13 Golders Way, London, NW11 8JY

- The application is made under section 89 Planning (Listed Buildings and Conservation Areas) Act 1990, and Schedule 3 of the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Barnet against Mr J Hayeem for a full or partial award of costs.
 - The Hearing was in connection with an appeal against a listed building enforcement notice alleging the carrying out of internal and external operations/building works not in accordance with the terms of listed building consent.
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Decision

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

Reasons

2. The application for costs and the arguments advanced for the applicant Council, and for Mr J Hayeem in response, were detailed in their written submissions. As such, I need not repeat them here.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG lists examples of behaviour whereby a procedural or substantive award of costs may be justified. However, the list of examples should not be regarded as exhaustive.
4. For all the reasons set out in detail in the associated appeal Decision letter, the listed building enforcement notice issued by the Council was technically defective and invalid beyond a point that it could have been corrected without injustice. Accordingly, the notice was quashed.
5. The Council's application for costs appears to be based around the following assertions relating to unreasonable behaviour by the appellant. Firstly, that the appellant failed to respond to communications and did not submit an application for listed building consent, which led to the notice being drafted as issued. Secondly, that the defects and the Council's proposed corrections to the notice were only apparent resulting from "admissions" by the appellant during the Hearing. I reject both of these assertions as set out below.

¹ Paragraph 030 ref 16-030-20140306

6. In taking enforcement action the Council had a procedural duty to ensure that the notice issued by them was carefully drafted. In this regard I note that the Council carried out detailed inspections of the building, including every room, in April and May 2019 noting the existence of 8 flats resulting from various internal works. As such, it is unclear to me why the notice and its annotated attached plans contained the numerous defects and ambiguities I referred to in the appeal Decision letter. The fact that no listed building consent was applied for was not relevant to the Council's need to ensure accurate drafting of the notice.
7. As to new "admissions" the appellant at the Hearing confirmed that instead of the 4 consented flats he created 8 instead. However, given their detailed inspections prior to their issue of the notice this must or should have been already apparent to the Council.
8. The Council's proposed alternative corrections to the notice so that it would only apply to the currently existing rear flats would give rise to different grounds of appeal, as set out in the appeal Decision letter. To require works outside of the currently existing rear flats, as drafted in the issued notice in part in the allegation² and annotated plans, and in the requirements which refer to the whole building, would have been prejudicial to those other flat occupiers' interests. As such, the Hearing was adjourned briefly at my direction to allow the Council time to consider the validity of the notice and whether it should be withdrawn. There was no "ambush" by the appellant resulting in adjournments as claimed.
9. In conclusion, unreasonable behaviour resulting in wasted expense as set out in the PPG has not been demonstrated. An award of costs is not therefore justified.

Thomas Shields

INSPECTOR

² Schedule 2.4, 2.5