
Costs Decision

Site visit made on 15 September 2021

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

an Inspector appointed by the Secretary of State

Decision date: 04 November 2021

Costs application in relation to Appeal Ref: APP/X5990/F/21/3275376 Flat 3, 31 Eaton Place, London SW1X 8BP

- 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 City of Westminster Council for a partial award of costs against Ms Maria Komarova.
 - The appeal was against a listed building enforcement notice alleging the placement of planter boxes on the roof of the property, the installation of metal railings on the roof of the property and the installation of an air-conditioning unit and associated enclosure on the roof of the property.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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. The word 'unreasonable' is used in its ordinary meaning, as established by the courts.
3. The City Council contends that the appellant has behaved unreasonably and that their unreasonable behaviour has directly caused the Council to incur unnecessary and wasted expense in the appeal process. This relates to the submission of new evidence in the final comments of their appeal against the Listed Building Enforcement Notice (LBEN).
4. The timetable for the submission of Statements and Final Comments was established by the Planning Inspectorate in correspondence dated 22 June 2021. In that correspondence it was made very clear that no new evidence is allowed in the final comments.
5. On 1 September 2021 the Council received correspondence from the Planning Inspectorate with the appellant's Final Comments. This document clearly contained new evidence under ground (e) relating to works and alterations that had taken place at other properties in the locality of the current appeal site. The objective of this evidence was to support the unauthorised works the subject of the LBEN issued on 15 April 2021.
6. After due consideration of the evidence, the Planning Inspectorate confirmed in correspondence dated 9 September 2021 that the City Council would have an

opportunity to respond to the new evidence. On 13 September 2021 the appellant withdrew Appendix 1 containing details of other properties in the locality and the Inspectorate wrote to the City Council on 14 September 2021 advising them that there was no longer a requirement to prepare a response. However, it is now evidence that before this withdrawal the City Council had spent considerable time in researching and preparing a written response to the new information contained in the appellant's Final Comments.

7. Therefore, by submitting and subsequently withdrawing information in their final comments I conclude that the appellant behaved unreasonably and that behaviour resulted in the City Council incurring unnecessary and wasted expense through the appeal process.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Ms Maria Komarova shall pay to the City of Westminster Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect to the submission of new information by the appellant in the final comments of their ground (e) appeal against the LBEN; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the person awarded against, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips

INSPECTOR