



Costs Decisions

Site visit made on 8 September 2022

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal A: APP/X5990/W/22/3295480 49 Cambridge Street, London SW1V 4PR

- 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 Mr Sabir for a full award of costs against City of Westminster Council.
 - The appeal was against the refusal of planning permission for amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house.
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Costs application in relation to Appeal B: APP/X5990/Y/22/3295484 49 Cambridge Street, London SW1V 4PR

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Sabir for a full award of costs against City of Westminster Council.
 - The appeal was against the refusal of listed building consent for amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house; installation of a new kitchen and removal of internal fixtures/partitions.
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Decision

APPEAL A

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

APPEAL B

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

Reasons

3. The Planning Practice Guidance 2019 (as amended) (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
4. More specifically, the application for costs was made by the applicant with reference to a refusal to grant permission and listed building consent for the amalgamation of an existing lower ground floor flat with the upper floors of a

building to form a single dwelling house. The applicant believes that the Council acted unreasonably on four different grounds. These comprise a perceived failure to have regard to specialist advice, give sufficient weight to the heritage benefits, recognise a lack of family dwellings and have proper regard to Policy 8 of the City Plan 2019 - 2040 (April 2021) (CP). Taken together these perceived failings risk an award of costs on substantive grounds.

5. The specific grounds relate to preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; a failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
6. The planning officer's reports and the Council's statement of case for both the listed building consent application and the planning permission application, fail to specify any harm to the special interest of the listed building, only discussing a minor benefit in heritage terms. Although CP Policy 39 was cited in the reason for refusal, the Council failed to substantiate any way in which the proposal would not accord with the Policy. This amounts to unreasonable behaviour on substantive grounds.
7. I acknowledge the evidence with respect to the comments of the Council's Conservation and Design Officer. The Planning Officer's report discusses the heritage benefits of the proposal and the effect of the scheme on the significance of the listed building. From the evidence the comments with respect to the listed building are generally in line with that of the Council's Conservation and Design Officer in terms of the heritage benefits of the scheme although this was not reflected in the reason for refusal stated in the decision notice for the listed building consent application. Therefore, the Council has not failed to have regard to the comments of the Conservation and Design Officer and has not acted unreasonably in this regard.
8. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Council assessed the heritage benefit of the proposal in the planning officer's report and statement of case. The weight given to heritage benefit of amalgamation of the dwellings in the overall planning balance is a matter of planning judgement. Although I have come to a different overall conclusion, the Council has not failed to adequately assess the proposal and has not behaved unreasonably in this respect.
9. The Council assessed both the floor space and layout of the dwelling on the upper floors of the building in the planning officer's report and statement of case. Given the size and number of the rooms within the dwelling, the Council has not behaved unreasonably in its assessment in this respect.
10. The wording of CP Policy 8 is clear with respect to the 200sqm limit. The Council adequately assessed the scheme against the policy taking into account its purpose and whether the proposal would be needed to protect a heritage asset. Therefore, the Council did not behave unreasonably in this particular respect.

11. The PPG advises that an application for costs will need to clearly demonstrate how any unreasonable behaviour has resulted in unnecessary or wasted expense. In other words, the existence of unreasonable behaviour is not sufficient to justify an award of costs in and of itself. The behaviour must also directly cause another party to incur unnecessary or wasted expense in the appeal process. Where a partial award is sought or granted then unnecessary expense needs to be clearly attributable to a specific aspect of the proceedings.
12. As I have found no unreasonable behaviour in relation to the determination of the planning application, the applicant would have necessarily incurred expense in relation to this aspect of the appeal. Consequently, the only unnecessary and wasted expense relates to those costs which were incurred in relation to the preparation of evidence associated with the appeal against the refusal of the listed building consent.

Conclusion

13. For the reasons outlined above, I conclude that a partial award of costs, to cover the expense incurred by the Applicant in defending the Council's refusal of listed building consent, is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that City of Westminster Council shall pay to Mr Sabir, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the appeal against refusal of listed building consent with such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to City of Westminster Council, to whom a copy of this decision has been sent, details of those relevant costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R Sabu

INSPECTOR