
Costs Decisions

Site visit made on 13 September 2022

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

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

Costs application in relation to Appeal A: APP/X5990/W/22/3290883 79 Dean Street, London W1D 3SJ

- 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 City of Westminster Council for a full award of costs against Mr Qin Xiao.
 - The appeal was against the refusal of planning permission for use of the 1st Floor for massage parlour/Chinese traditional medicine treatments (sui Generis).
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Costs application in relation to Appeal B: APP/X5990/Y/22/3290882 79 Dean Street, London W1D 3SJ

- 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 City of Westminster Council for a full award of costs against Mr Qin Xiao.
 - The appeal was against the refusal of listed building consent for internal partitions comprising of lightweight internal 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. It adds that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur in a number of circumstances, including when the development is clearly not in

- accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
5. The application for costs was made by the Council with reference to a refusal to grant permission for the use of the 1st floor for massage parlour/Chinese traditional medicine treatments and listed building consent for internal partitions comprising of lightweight internal partitions. The Council believes the Appellant behaved unreasonably by failing to address the reasons for refusal, the relevant planning policies, and relevant statutory tests (with regard to the historic environment).
 6. The application documents submitted included a summary that the Appellant stated stands as the Design and Access Statement and Heritage Statement. However, it includes no assessment of the significance or special interest of the listed building and consideration of the statutory duties under sections 16(2) and 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990 had not been undertaken. Furthermore, there is no indication that resources such as the Historic Environmental Record had been consulted. Moreover, this information was not included in the Grounds of Appeal in the Appellant's Statement of Case. As such, since there was insufficient information to determine Appeal B, it had no prospect of succeeding and the Appellant has behaved unreasonably on substantive grounds.
 7. Planning law requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise.
 8. The Appellant set out information regarding the history of the occupation and tenancy of the site in the Statement of Case. Although limited evidence with respect to the development plan was put forward, the Appellant set out matters that constitute material considerations. Therefore, the Appellant has not behaved unreasonably in this respect.
 9. 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.
 10. As I have found no unreasonable behaviour in relation to the planning application and associated appeal, the Council would have necessarily incurred expense in relation to this aspect of the appeal. Accordingly, 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.
 11. Consequently, the Council had incurred unnecessary expense in the appeal process in defending their position in respect of Appeal B.

Conclusion

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

Costs Order

13. 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 Mr Qin Xiao shall pay to City of Westminster Council, 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.
14. The Council is now invited to submit to Mr Qin Xiao, to whom a copy of this decision has been sent, details of those 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