
Costs Decisions

Hearing Held on 12 October 2022

Site visit made on 12 October 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Appeal 1: APP/X5990/Y/22/3304123

13-17 Montpelier Street, London SW7 1HQ

- 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 Monte London Ltd for a full award of costs against the City of Westminster Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for approval of details of works required by a condition of a listed building consent.
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Appeal 2: APP/X5990/Y/22/3304129

13-17 Montpelier Street, London SW7 1HQ

- 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 Monte London Ltd for a full award of costs against the City of Westminster Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for approval of details of works required by a condition of a listed building consent.
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Appeal 3: APP/X5990/Y/22/3304908

13-17 Montpelier Street, London SW7 1HQ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Monte London Ltd for a full award of costs against the City of Westminster Council.
 - The appeal was against a failure to give notice within the prescribed period of a decision on an application for approval of details of works required by a condition of a listed building consent.
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Decisions

1. The application for an award of costs in relation to Appeal 1 is allowed in the terms set out below.
2. The application for an award of costs in relation to Appeal 2 is allowed in the terms set out below.

3. The application for an award of costs in relation to Appeal 3 is allowed in the terms set out below.

Reasons

4. The costs applications and responses were submitted in writing, with some additional points made orally at the Hearing.
5. 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.
6. The applicant claims that the Council acted unreasonably on the following grounds:
 - (a) delaying the determination of the applications for extraneous reasons wholly unrelated to the applications; and
 - (b) failing to carry out its statutory duties.

Ground (a)

7. The Council's Committee delayed determination of the applications on 2 separate occasions for 2 different reasons. On the first of these occasions the reason was to allow a site visit given that works had commenced, there was a high level of community objection, and it was considered beneficial for the committee to obtain a greater sense of understanding of what was happening on the ground. Given that officers recommended approval of the applications, it is apparent that the visit was primarily intended to explore concerns arising from representations by interested parties. The subject matter of the latter however had little direct relevance to the question of whether or not the details whose approval was requested were acceptable.
8. On the second, more critical occasion, the reason given for delay was that the works to which the conditions applied also required planning permission, and the related planning applications were themselves subject of appeal. The latter is true at least in relation to the applications subject of Appeals 1 and 2, with the related planning appeal being APP/X5990/W/22/3290244, but not apparently in relation to the application subject of Appeal 3.
9. In any case, and as set out within my main decision, listed building consent and planning permission are two separate things. The acceptability of details submitted in relation to a listed building consent can be properly considered whether or not any required planning permission has also been granted. Consistency between decisions is clearly important, not least in order to ensure that a scheme can be implemented. However, there was no clear logic in deferring the discharge of conditions in relation to consented works in order to ensure that the details matched those within a planning permission which both did not exist, and which might never exist. The proper starting point in each case were the listed building consents.
10. That the Committee then resolved to approve the applications following the lodging of the appeals shows both lack of consistency and the lack of necessity for earlier delay. Whilst the Committee may have been within its rights to defer consideration of the applications, the process ultimately led to its failure to

determine the applications within the required time period. This was unreasonable, and given both the Committee's late resolution to approve, and the Council's decision not to contest the appeals, the latter could clearly have been avoided by more timely decision making. Ground (a) therefore succeeds.

Ground (b)

11. The Applicant does not specify what statutory duties the Council failed to carry out. However, insofar as the reason for appeals was the Council's failure to determine the applications, this is presumably the time period for determination as set out within The Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended).
12. In simple point of fact, the Council failed to determine the applications within the extended time period agreed between the parties. This was unreasonable for the reasons already set out above. Ground (b) therefore succeeds.

Summary

13. I find therefore the applicant's case succeeds on both the grounds claimed. Given that the Council behaved unreasonably in failing to determine the applications and given that this resulted in 3 appeals which could all have been simply avoided, the applicant's full costs of mounting these appeals constitutes wasted expense.

Conclusions

14. For the reasons set out above, I conclude that the applicant's claim for an award of costs in relation to Appeals 1, 2 and 3 should be allowed.

Benjamin Webb

INSPECTOR

Costs Orders

Appeal 1

15. 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 the City of Westminster Council shall pay to Monte London Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. Monte London Ltd is now invited to submit to the City of Westminster Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal 2

17. 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 the City of Westminster Council shall pay to Monte London Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. Monte London Ltd is now invited to submit to the City of Westminster Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal 3

19. 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 the City of Westminster Council shall pay to Monte London Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. Monte London Ltd is now invited to submit to the City of Westminster Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.