



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 A: APP/X5990/W/22/3290244

13-17 Montpelier Street, London SW7 1HQ

- 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 Monte London Ltd for a full award of costs against the City of Westminster Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for use of first and second floor level as two self-contained residential flats (Class C3), creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, shopfront alterations to nos. 13 and 15, new retractable awnings, lowering of front basement vaults and internal alterations in connection with the continued use of the restaurant at lower ground and ground floor level.
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Appeal B: APP/X5990/W/22/3290247

13-17, Montpelier Street, London SW7 1HQ

- 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 Monte London Ltd for a full award of costs against the City of Westminster Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for use of first and second floor level as three self-contained residential flats (Class C3), infill extension at rear first floor level to Montpelier Place elevation, creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, in connection with the continued use of the restaurant at lower ground and ground floor level.
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Appeal C: APP/X5990/Y/22/3290246

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 refusal of the local planning authority to grant listed building consent for erection of infill extension at rear first floor level to Montpelier Place

elevation; creation of terrace at rear first floor level; opening up blind windows to Montpelier Place; new openable rooflights on rear first floor flat roof; replacement of existing full height extract ductwork to rear; removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level; repair works to main roof and internal alterations.

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

Reasons

4. The costs applications and responses were submitted in writing.
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 on the grounds which I summarise as:
 - (a) refusing the applications on grounds not material to the development and failing to substantiate its reasons for refusal;
 - (b) incorrect application of local policy; and
 - (c) in relation to Appeal B, adding an additional reason for refusal at appeal.
7. Though the claim includes Appeal C it does not contain any grounds which are applicable to it. The costs application in respect of Appeal C therefore fails.

Ground (a)

8. The Council's sole reason for refusal of the application subject of Appeal A and its second reason for refusal of the application subject of Appeal B were imposed on account of the high level of public objections received.
9. Whilst neighbour amenity is clearly a material consideration, no harm was identified in the Committee Report. Though it was within the remit of the Council's Committee to make a decision contrary to the officer recommendation, no clear or valid reason for doing so has been provided. In this regard the simple existence of a large number of public objections does not on its own represent a valid reason.
10. No clear explanation of how and why 'intensification' would arise as a result of the appeal schemes has been provided by the Council. Thus, further assertions of harm caused by late night activity and disturbance lack proper explanation or substantiation. This is clearly unreasonable. Given that I have furthermore found these reasons for refusal to be without merit within my main decision, the expense associated in addressing them at appeal was unnecessary in relation to Appeal B and wasted in relation to Appeal A; the latter because the

appeal could have been avoided. The fact that I have dismissed Appeal B does not alter my findings above.

Ground (b)

11. The claim makes reference to both Parts C and D of Policy KBR15 of the Knightsbridge Neighbourhood Plan 2018-2037 (the NP) which was cited in the reasons for refusal of the applications subject of Appeals A and B. Neither Parts C or D were specifically identified in the decision notice, however the Council has clarified that it relied on Part C, as it considers Part D to be irrelevant. I agree with the latter.
12. I have already set out in my main decision why I also consider that Part C of Policy KBR15 of the NP is irrelevant, and in so doing have established that this is due to misinterpretation. As such I agree with the applicant. Citing conflict with the policy was clearly unreasonable and thus all expense associated with addressing the matter at appeal was unnecessary. Such expense partly accounts for that associated with Ground (a). Ground (b) therefore succeeds.

Ground (c)

13. The costs claim makes reference to the application I have labelled under Appeal C. The Council's identification of harm to 6-17 Montpelier Place is however relevant only in relation to Appeal B. The parties agreed at the Hearing that this was indeed the case.
14. Notwithstanding the requirements set out within paragraphs 194 and 195 of the National Planning Policy Framework, neither party explicitly considered the setting of 6-17 Montpelier Place at application stage.
15. Though harm in relation to the significance of 6-17 Montpelier Place might nonetheless have been inferred from the officer assessment contained within the Committee Report, it was neither explicitly stated nor included within the decision notice. Raising the matter only at appeal stage was therefore clearly unreasonable.
16. The matter was not however new given that it had been previously raised by interested parties. Moreover, in view of the statutory duty set out in Section 66 of the Act, it was a matter whose consideration was both necessary and could not be ignored. That and the above being so, I cannot find that expense incurred by the applicant in relation to the matter was either unnecessary or wasted, despite unreasonable behaviour having been clearly demonstrated. Ground (c) therefore fails.

Conclusions

17. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated in relation to Grounds (a) and (b), and that a full award of costs is therefore justified in relation to Appeal A, and a partial award of costs is justified in relation to Appeal B.

Benjamin Webb

INSPECTOR

Costs Orders

Appeal A

18. 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 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.
19. 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 B

20. 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 the City of Westminster Council shall pay to Monte London Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the second reason for refusal of planning permission; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. 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.