



The Planning Inspectorate

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Mr Nick Westlake
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Your Ref: 2022/0244

Our Ref: APP/U5360/W/22/3302802

Date: 3 April 2024

Dear Sir

Local Government Act 1972 – section 250(5)
Town and Country Planning Act 1990 – sections 78 & 322
Land at 1 Chapel Place, Rivington Street, London EC2A 3DQ
Appeal by Ron Farmer of Rivington Properties: Application for costs

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to refer to the Planning Inspector's appeal decision of 18 May 2023. This allowed the appeal by Ron Farmer of Rivington Properties against the decision of the London Borough of Hackney Council dated 12 April 2022 to refuse prior approval under Article 3(1) Schedule 2 Part 3 class MA for a change of use from office (class E) to a one bedroom flat (class 3).
2. An application for a partial award of costs against the Council was originally made by the appellant on 10 July 2022 but was overlooked due to an administrative error. The costs application was then resubmitted on 18 May 2023 when the appeal decision had been received. The Council submitted a rebuttal statement on 20 December 2023 and the appellant submitted final comments on 2 January 2024.
3. The Planning Inspectorate's email of 6 December 2023 explained that because the appointed Inspector who determined the appeal had since retired, the costs application would be determined in this office on behalf of the Secretary of State.
4. As the documents submitted by the appellant and Council in relation to the costs application have been fully disclosed to the parties, it is not proposed to summarise them. They have been carefully considered.

Summary of decision

5. The formal decision is set out in paragraph 16 below. The application succeeds and a partial award of costs is being made.

Basis for dealing with the costs application

6. In planning and enforcement appeals the parties are normally expected to meet their own expenses irrespective of the outcome. However, section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party, irrespective of procedural method, where it is found that one of the parties to the appeal has behaved unreasonably and expense incurred by any of the other parties is wasted as a result.

7. This application for costs has been considered by reference to the Government's Planning Practice Guidance (PPG)¹ on awards of costs, the appeal documents, the correspondence on costs and all the relevant circumstances.

Reasons for the decision

8. The costs application is on the basis that the Council acted unreasonably by failing to provide evidence to substantiate the first reason for refusal which was that the application site ("No.1") lies within a building that directly abuts / fixes on to a grade II listed building, 9 Chapel Place ("No.9"), and that as a result the appellant incurred wasted expense in the appeal proceedings. PPG paragraphs 032 (unnecessary or wasted expense), 041 (partial awards) and 049 (unreasonable behaviour) are therefore particularly relevant.

9. No.1 is physically linked to No.9 by part of an intervening building that adjoins both properties. That intervening building existed before No. 9 was listed, but is not itself listed and does not form part of the appeal site. The appeal site is visually and physically separate from No.9 and has no access to the courtyard that forms part of the curtilage of the listed building.

10. Historic England Advice Note No.1 states that "in general, a structure attached to a building ... will also be covered by the listing if the structure was ancillary to the principal building at the date listed". Whilst this is not mentioned in the delegated report, the Council's cost rebuttal advises that this Historic England advice along with historic images, a previous 2021 application relating to a nearby property, information provided by the appellant and verbal advice from the Principal Conservation Officer informed the judgement that No.1 should be regarded as abutting or being fixed to a listed building.

11. However, the application form for prior approval states that No. 1 is not a listed building or within the curtilage of a listed building. The Design and Access Statement identifies that there is a listed building nearby, No.9, and goes on to explain why No.1 is not within the curtilage of that listed building. The appeal Inspector agreed that No. 1 does not form part of a listed building or land within its curtilage.

12 Other than including a site location plan, photographs and brief description of No.1 and its relationship with its surroundings, including the listed building, the delegated officer report provides no evidence to support the first reason for refusal. Furthermore, no

¹ PPG ID:16-027 to 064 (2014).

planning history relating to No.1 is reported whereas it is clear from information provided with the costs application that planning permission was granted in 2004 for development that involved significant works to No.1 without an accompanying listed building consent; this is not disputed by the Council. That previous case should have been taken into account by the Council as it was relevant to the decision as to whether No.1 is covered by the listing of No.9.

13. Prior approval is a light-touch process which applies where the principle of the development has already been established and it is important that local planning authorities do not impose unnecessarily onerous requirements on developers². The application included reasonable information explaining why the appellant considered the site to not be within the curtilage of a listed building. If the Council disagreed with that as a matter of fact, it was its responsibility to provide reasonable evidence to demonstrate why or to seek further information from the applicant if necessary.

14. In light of the above, the failure of the Council to thoroughly research the planning history of the site or to properly explain why it considered No.1 to be within the curtilage of a listed building in the delegated report amounts to unreasonable behaviour that led to a reason for refusal that is not supported by evidence.

15. The application was refused for two reasons. The appellant incurred significant additional costs in the appeal process by having to provide evidence, including from a specialist consultant, to demonstrate that the Council's first reason for refusal was not justified. Those additional costs could have been avoided if the Council had not acted unreasonably in imposing the first reason for refusal.

Formal decision

16. For the reasons given above, the Secretary of State has decided that a partial award of costs, on grounds of "unreasonable" behaviour resulting in "wasted" or "unnecessary" expense, is justified in the particular circumstances.

Costs Order

17. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** the London Borough of Hackney Council shall pay to Ron Farmer of Rivington Properties their costs of the appeal proceedings before the Secretary of State, limited to the costs incurred relating to the first reason for refusal (heritage).

18. You are now invited to submit to the Council details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to the Council.

Yours faithfully

William Fieldhouse

Authorised by the Secretary of State
to sign in that behalf

² PPG ID:13-029 (2014).