



## Costs Decision

Site visits made on 5 and 9 July 2024

**by Tom Bristow BA MSc MRTPI AssocRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 July 2024**

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### **Costs application in relation to Appeal Ref: APP/P1133/Y/23/3325692 13 Devon Square, Newton Abbot TQ12 2HN**

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, sections 20, 89 and Schedule 3, and the Local Government Act 1972 as amended, section 250(5).
- The application is made by Barrie Douglass, of Premier Parking Solutions Ltd., for an award of costs against Teignbridge District Council ('TDC').
- The appeal was against the refusal of TDC to grant listed building consent in relation to application ref. 18/02317/LBC for works described on the application form as the '...installation of CCTV cameras to ensure premises security'.

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### **Decision**

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

### **Reasons**

2. Parties to planning appeals normally meet their own expenses. The Planning Practice Guidance ('PPG'), however, explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.<sup>1</sup> Although costs applications may relate to events before an appeal is made, an award cannot extend to costs incurred beforehand.<sup>2</sup>
3. The appellant's application for a full award of costs is set out principally as six interconnected concerns as to how TDC dealt with the works proposed via application ref. 18/02317/LBC.<sup>3</sup> That was, retrospectively, for CCTV cameras installed at no. 13 Devon Square by 31 October 2017 (part of a grade II listed building). TDC validated the application on 29 November 2018 and reached a decision on 18 April 2023, a period of time approaching 4.5 years.
4. Firstly the appellant argues that TDC did not respond, other than obliquely in reaching their decision, to the appellant's correspondence of 28 October 2019 which suggested 'how the matter could be resolved'.<sup>4</sup> That correspondence, however, suggest a wholly different approach than originally proposed (namely affixing CCTV to street furniture). There was also another alternative suggestion of a pole mounted camera within the plot of no. 13.
5. Whilst the lack of subsequent correspondence is perhaps surprising, both those approaches appear outwith the provisions of section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'LBCA Act'). Therefore, along

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<sup>1</sup> Reference ID: 16-028-20140306.

<sup>2</sup> PPG Reference ID: 16-032-20140306.

<sup>3</sup> Under paragraph 2 to their application for costs.

<sup>4</sup> Appendix A to the appellant's costs claim.

with a differing approach in substance, there is also a clear difference in procedure; planning permission as opposed to listed building consent ('LBC') would have instead been required.

6. At paragraph 11 of the associated appeal decision I characterised the appellant's intentions for no. 13 as in a state of flux. Although TDC appears to have not responded specifically to the appellant's correspondence of 28 October 2019, via decisions of 30 September 2021 and 20 June 2024, TDC determined further applications at no. 13. It appears application ref. 18/02317/LBC fell unthinkingly to the bottom of the pile, and neither main party accorded its outcome much priority.
7. Secondly the appellant argues that the conservation officer who provided advice on 19 May 2020,<sup>5</sup> had not previously been involved and referred to 'correspondence and actions/ lack of actions that had been taken by the applicant and recommends a refusal of LBC without being aware of all of the factors or discussing the matter with the applicant'. It is, however, commonplace for officers to change during the determination of applications (and no one is omniscient).
8. It is also unclear what 'all of the factors' are referred to by the appellant in the foregoing. If that is a reference to the potential alternative approaches to providing surveillance at no. 13, that is addressed above. That may instead be a reference to the appellant's third argument for an award of costs, that there are unsubstantiated statements made 'about how the applicant responded to the Council'. Even if such unsubstantiated statements exist, there is no indication that they are relevant to the merits of the works (or influenced the decision to refuse LBC).
9. I accept, in relation to the appellant's third argument for an award of costs, that it would have been beneficial for a site visit to have been undertaken for the reasons given in paragraph 20 of the associated appeal decision in particular. However, as in paragraph 13 of the associated appeal decision, that appears to have been on account of Covid-19 restrictions, a common occurrence. TDC has, furthermore, set out that there had been a site visit by a conservation officer previously.
10. The appellant also argues that the officer's report contains errors, poor drafting, and refers to the incorrect cameras. I accept, as set out in paragraph 13 of the associated appeal decision, that the reference to cameras 3 and 4 in the decision notice is incorrect, and that cameras 1 and 2 should have been cited. It is, however, clear from the reasoning in TDC's officer report and in the decision notice which cameras are at issue. That is, effectively, a typographical error rather than one of any substance. It is unclear how, in the appellant's view, other errors or poor drafting influenced either TDC's decision or the necessity of appealing.
11. The appellant's sixth contention is that TDC did not acknowledge that security measures, amongst other modern interventions, are characteristic of the area. That is, however, a matter of judgement. In fairness, TDC acknowledge the presence of such features, but are not of the same mind as the appellant in

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<sup>5</sup> Appellant costs claim, appendix B.

terms of their prevalence. As reflected in paragraph 27 of the associated appeal decision, there is nuance. Drawing together my reasoning so far, albeit that TDC could have dealt with application ref. 18/02317/LBC more efficiently and with greater attention to detail, there is nothing to substantiate an award of costs in respect of the appellants first to fourth or sixth arguments.

12. The appellant's fifth argument is that TDC failed, having established in their view that harm to historic significance would result,<sup>6</sup> to weigh countervailing benefits as directed by paragraph 208 of the National Planning Policy Framework (published 20 December 2023, 'NPPF'). Equivalent provisions were formerly in paragraph 202 of the previous iteration of the NPPF published on 20 July 2021.
13. TDC's approach on this is threadbare. The officer report does not expressly grapple with any public benefits. TDC's appeal statement somewhat compounds that by setting out how 'no public benefits were put forward by the appellant during the application stage', and that there are no public benefits. As in the associated appeal decision, I disagree with that premise. Security, in my view, may fairly be considered a public benefit in this instance.
14. Whilst my position is incidental insofar as costs are concerned, the PPG sets out in line with well-worn case law that what is, or is not, a material consideration is ultimately a matter for the courts.<sup>7</sup> As NPPF paragraph 96.b) refers to 'crime and disorder, and the fear of crime...', it is nevertheless probably safe to say that the implications of a scheme in deterring crime and disorder are capable in some circumstances of being material and a public benefit. It might have been advisable for TDC to have reached a view on the weight they considered the appellant's arguments attracted rather than to potentially allude to materiality.
15. That said, for two principal reasons, I am not of the view that TDC's approach in this respect represents unreasonable behaviour. Firstly the purpose of CCTV cameras is self-evident. The objective of improving security cannot therefore have been ignored as it is intrinsic to the works undertaken. Second, as reflected in paragraph 24 of the associated appeal decision, the appellant's justification for the scheme leans heavily towards the specific nature of the business use accommodated by no. 13 (management of parking provision).
16. The PPG sets out, in respect of planning permission, how the benefit of a scheme to particular persons will rarely be justification for a scheme, and never in respect of a company.<sup>8</sup> Again in respect of planning, on 17 December 2015 a written ministerial statement was made concerning intentional unauthorised development.<sup>9</sup> That set out how intentional unauthorised development was capable of being a material consideration, given the absence of 'opportunity to appropriately limit or mitigate the harm that has already taken place'.
17. In this instance, as application ref. 18/02317/LBC was retrospective, that opportunity did not exist. Although I reached the view that the works strike a suitable balance in terms of adverse effects and public benefits, I explain at

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<sup>6</sup> A position not necessarily at odds with that of the appellant (see paragraph 17 of the associated appeal decision).

<sup>7</sup> PPG reference ID: 21b-009-20140306.

<sup>8</sup> Reference ID: 21a-015-20140306.

<sup>9</sup> Official record HCWS423.

paragraph 24 of the associated appeal decision that there is an absence of evidence of alternative potential approaches.

18. In short it was therefore not unreasonable, as a matter of judgement, for TDC to take the view that the works were unacceptable. Their decision notice and statement of case at appeal holds the scheme up against relevant provisions of statute, the NPPF and the development plan. Inherent throughout the associated appeal decision is that there are various judgements involved in determining the acceptability of the works, which following the foregoing reasoning, TDC have not approached unreasonably.

### **Conclusion**

19. Whilst an appeal occurred as the culmination of a lengthy history to the works where more could have been done in respect of efficiency and attention to detail, in my view no action or inaction taken by TDC is demonstrative of unreasonable behaviour with reference to the approach in the PPG. Having taken account of all other matters raised, I therefore conclude that an award of costs is not justified.

*Tom Bristow*

INSPECTOR