



Costs Decision

Site visit made on 11 September 2024

by **Thomas Shields DipURP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Costs application in relation to Appeal Ref: APP/X5990/F/23/3319608

74 Park Street, London, W1K 2JX

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 39, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by the City of Westminster Council for a partial award of costs against Mr Stefano Menconi.
 - The appeal was against a listed building enforcement notice alleging the carrying out of unauthorised internal and external works to a Grade II listed building.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The application for an award of costs is made on substantive and procedural grounds in respect of the appeal on ground (e) for the sub-basement only.
4. With regard to procedural matters the applicant (Westminster City Council) points to the late submission of evidence from the respondent (Mr Menconi) in respect of options for sealing off the sub-basement and alternative courtyard access. I concur that this evidence was submitted late outside of the statutory timetable resulting in additional time and work for the Council, and hence amounts to unreasonable behaviour. I turn to substantive matters next.
5. Although the late submissions referred to above were not detailed schemes, it would nonetheless have been technically possible for listed building consent to be granted subject to a retrospective condition. Such a condition could have required full scheme details to be submitted and approved by the Council within a set timeframe (allowing for any appeal), and in the event of failure to meet the condition requirements, that the sub-basement is infilled in default. The point here is that the ground (e) appeal was technically capable of being allowed with a modified scheme to be submitted and approved, although I found such a proposal to be wholly unacceptable in principle as set out in paras.19-23 of the appeal Decision.
6. I acknowledge that the respondent's appeal submissions included a detailed assessment of the significance of the listed building. However, the principle for a sub-basement was considered and refused by the Council in an earlier application for listed building consent in 2010 (Ref: 10/08472/LBC), and later dismissed on

appeal in 2011. These were highly significant material considerations, and there is nothing in the respondent's appeal submissions that indicates in terms of the requirements of the Act¹, or in national policy, that there has been any change of any substance in the intervening period that would have led to a different outcome. The failure to take proper account of these in submitting the appeal amounts to unreasonable behaviour.

7. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the appeal on ground (e) in relation to the sub-basement and a partial award of costs is therefore justified.

Costs Order

8. 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 Stefano Menconi shall pay to the City of Westminster Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the appeal on ground (e) related to the sub-basement, and incurred in respect of this costs application; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Mr Stefano Menconi, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Shields

INSPECTOR

¹ Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)