The Planning Inspectorate

Costs Decision

Site visit made on 2 October 2012

by Colin A Thompson DiplArch DipTP RegArch RIBA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 October 2012

Costs application in relation to Appeals (B) Ref: APP/X5210/F/12/2173606, 2173611+12, 2173545+46 and 2173616 Flat 1, 51 Frognal, LONDON NW3 6YA.

- The application is 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 by: Ms S Jagger (Flat 3); Mr A Brophy & Ms J Hildebrand (Flat 4); Mr J Costello & Ms A Waters (Flat 2), and; Mr A Brophy again (acting as Secretary to 51 Frognal Ltd) for an award of costs against the Council of the London Borough of Camden.
- The appeal was against the issue of a listed building enforcement notice for works carried out without the benefit of listed building consent.

Decision and Costs Order

1. 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 Council of the London Borough of Camden shall pay to, Ms S Jagger (Flat 3), Mr A Brophy & Ms J Hildebrand (Flat 4), Mr J Costello & Ms A Waters (Flat 2) and 51 Frognal Ltd partial costs (for work done before 17/7/2012) of the appeal proceedings described in the heading of this decision.

2. The applicant is now invited to submit to the Council of the London Borough of Camden, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Gist of the Case for the Applicants

3. Camden Enforcement Notice Ref: EN11/1111 dated 23 February 2012 has been accepted by the Council as being incorrect and is as a consequence invalid. The Council say that correct notices have been served but the applicants have not received the so called corrected notice.

4. In paragraph 25, of its submissions in response to this costs application, the Council say that any confusion about liability for complying with the notice could have been cleared up if the appellants had asked for clarification. The applicants did this in writing by recorded delivery and email to John Sheehy, Development Control, Planning Services, London Borough of Camden, and Carole Faffe-Moses, Legal Services, also at the London Borough of Camden. Follow-up telephone calls to the Council did not get it to accept that the alleged breaches applied entirely to Flat 1. The applicants therefore had no alternative but to appeal.

5. It was not until receipt of a letter from the Council, dated 17/7/2012, that it was confirmed that the applicants were not liable for the alleged breaches. By this time it was too late because expenditure had been expended.

Gist of the response by the Council

6. The Council has a duty to serve the notice as set out in section 38(4) of the PLB+CA Act. This requires, amongst other matters, for the notice to be served on …*any other person having an interest in the building which in the opinion of the authority is materially affected by the notice*…

7. Despite the Council being required to serve the notice on all the persons the subject of this application (as the owner and leaseholders) it is the choice of the parties whether to appeal against the notice, or not. Any confusion about liability for complying with the notice could have been resolved with the Council before appealing and the Council should not be liable for the costs of an unnecessary appeal.

My Reasoning

8. In planning appeals, and other proceedings to which the Circular applies, the parties involved normally meet their own expenses. Assuming an application is made in a timely manner, as in this case, the Circular advises that, irrespective of the outcome of the appeal, costs may only be awarded against the party whom the award is sought if it has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.

9. Reference is made to service of an incorrect notice and its replacement with a correct one. But I have no record of this "other notice" in the representations apart from the applicants' unsupported assertions. Indeed, I checked at the accompanied site visit, whether I had the correct notice (the one dated 23 February 2012), and it was confirmed by the parties present, including Mr Brophy, that I did.

10. For the reasons given, in paragraph 13 of my substantive appeals decision, it appears to me that the Council correctly served the notice. However, the heading of the notice is unclear in that the address is give as 51 Frognal and no reference is made to the works just applying to Flat N° 1.

11. In such circumstances, where there was potential for confusion, it seems to me to have been appropriate for all the notice parties to have appealed to protect their interests. That the Council did not clarify the matter expeditiously, and no denial of the applicants' case in this regard is made in its response to the application, then this would appear to me to be unreasonable behaviour of the kind set out in paragraph B4 of the Circular where a failure to produce required information in support of an enforcement notice has resulted in work being undertaken that turns out to be fruitless. But any award of costs should just be a partial one regarding the work done by the applicants before 17/7/2012 when apparently the question of liability was clarified. At this point the applicants could have withdrawn their appeals.

Colin A Thompson