



Costs Decision

Hearing held on 8 September 2015

Site visit made on 8 September 2015

by J J Evans BA (Hons) MA MRTPI

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

Decision date: 22 October 2015

Costs application in relation to Appeal Ref: APP/X5210/Y/15/3006984 20 Prince Albert Road, London NW1 7ST

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Gavin Pattison for a full award of costs against the Council of the London Borough of Camden.
 - The hearing was against the refusal of listed building consent for the erection of a single storey rear extension at basement level (following demolition of existing conservatory), replacement of door on rear elevation at lower ground floor level and internal alterations in connection with the change of use of basement and ground floor from 2 x 2 – bedroom flats to a 1 x 3 - bedroom maisonette (Class C3).
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Decision

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

The Submissions for Mr Gavin Pattison

2. The application is made for a full award of costs on the basis that the Council have acted unreasonably with regard to both substantive and procedural matters. The application was submitted in writing with reference to the provisions in Circular 03/2009. Further verbal observations were made to supplement the written statement and as final comments.
3. The applicant considered the Council had been unreasonable in disregarding the outcome of two pre-application consultations, with no plausible reason given as to why this occurred or why inconsistent advice was given. The applicant has a right to reliable pre-application responses, and it is reasonable to expect a site visit where a fee has been paid. Had the Council followed the outcome of either pre-application response, the appeal could have been avoided, along with the relevant costs incurred.
4. The reason for refusal and the associated Council statements do not stand up to scrutiny, including with respect to the blocking up of double doors. The comments of the Council are considered irrelevant and unsubstantiated. The Council persisted in preferring the 2004 scheme for 18 Prince Albert Road despite detailed evidence being provided by the applicant as to why this option was not appropriate.

The Response by the Council of the London Borough of Camden

5. The response of the Council was made verbally. The opinions given in the pre-application enquiries were made without the benefit of a site visit, and pre-application advice is given without prejudice to a future decision. The concern of the Council was the works around the whole of the proposed staircase, and matters of enclosure, visual and physical permeability are relevant. Planning history showed that there was an alternative solution at No 18. The Council had tried to help and provide an alternative it considered would have less impact on the listed building. Thus the Council have not been unreasonable nor has there been additional expense to the applicant.

Reasons

6. The Planning Practice Guidance (the Guidance) has superseded Circular 03/2009. It advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
7. The Guidance advises that awards against a local planning authority may be procedural relating to the appeal process, or substantive relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although behaviour at the time of the planning application can be taken into account.
8. For the reasons given in my decision I have found that the proposal would unacceptably harm the special interest of the listed building. The Council refused the application and substantiated the decision at both the application and appeal stages. The consideration of applications involves matters of judgement that are at times finely balanced. The Council has given a different weight to the issues than the applicant, and on the basis of the evidence before me, I do not consider they have been unreasonable.
9. The Guidance also advises that a Council refusing to enter into pre-application discussions or not providing a helpful approach to avoid an appeal, could be unreasonable behaviour. Whilst the appeal scheme was given support at the pre-application stage, this advice was caveated, and the Council explained the reason for the change of position during the consideration of the application. I appreciate this would have been frustrating for the applicant, but I also note that whilst the application was live, the Council suggested an alternative preferred option. This is not unreasonable behaviour, and in such circumstances the decision to proceed with an appeal would have been one for the applicant to make.
10. Thus, I find the Council did not act unreasonably in reaching the decision it made on the application. Nor do I consider the applicant has incurred unnecessary or wasted expense in the appeal process. Therefore an award of costs is not justified in this instance.

J J Evans

INSPECTOR