
Costs Decision

Hearing Held on 7 September 2021

Site visit made on 8 September 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Costs application in relation to Appeal A Ref: APP/X5210/C/20/3263558 and Appeal B Ref: APP/X5210/C/20/3263559

48 Mornington Terrace, London NW1 7RT

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application in appeal A is made by JL Center Holdings LLP and in appeal B by Undercover Architecture Ltd for a partial award of costs against the Council of the London Borough of Camden.
- The hearing was in connection with an appeal against an enforcement notice alleging without planning permission: the material change of use of the basement from part of a residential dwelling to an office.

Costs application in relation to Appeal C Ref: APP/X5210/F/20/3263561

48 Mornington Terrace, London NW1 7RT

- 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 JL Center Holdings LLP for a full or partial award of costs against the Council of the London Borough of Camden.
 - The hearing was in connection with an appeal against a listed building enforcement notice alleging without listed building consent: unauthorised internal and external alterations at basement level of this 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.

Preliminary Matters

2. The Listed Building Enforcement Notice (LBEN) subject of appeal C was withdrawn at the hearing. Consequently, there is no corresponding appeal decision. The application for costs and subsequent comments from the Council and appellant were made in writing following that hearing.
3. The hearing also concerned appeals A and B relating to an enforcement notice. These are only subject of the application for costs insofar as the appellant suggests they would have been dealt with via the written representations procedure had they not been linked to this appeal. Consequently, the appellant has applied for an award of costs on those appeals relating solely to the part of the hearing relating to those appeals.

Reasons

4. 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. The application for costs is on both procedural grounds relating to the process and substantive grounds relating to the issues arising from the merits of the appeal.

Appeal C

5. It has been suggested that the Council behaved unreasonably in this instance in issuing a poorly drafted LBEN, their subsequent behaviour in withdrawing contravention 2 and requirement 2 shortly before the hearing and subsequent withdrawal of the LBEN during the hearing.
6. The LBEN expressly related to a number of works to the basement of the building and not to any other parts of the building. These included works at the rear including an extension, referred to at contravention 7 and requirement 7 of the LBEN. That extension was at both basement and ground floors. It was unclear how the requirements of the LBEN could be achieved at basement level without affecting the upper floor of the extension. It has been suggested that structural evidence may have overcome that, but this was not available. Given other contraventions listed on the LBEN related to works within the basement that may have been linked to the rear extension in some way, there was also potential that these would also have needed correcting.
7. The appellant raised the prospect that the LBEN was a nullity early in the process. This related to the requirements of the LBEN and they suggested that the flaws contained within them meant the LBEN was defective on its face.
8. Subsequently, a letter was sent by The Planning Inspectorate to the appellant and Council questioning the requirements of the LBEN. This indicated that the LBEN was a nullity due to some requirements appearing confused, unclear and ambiguous such that the appellant could not know what he was required to do to remedy the relevant contraventions of listed building control. It was clear from this that the LBEN was poorly drafted.
9. The Council disputed that the LBEN was a nullity. I accept that is not unreasonable. Nevertheless, they did accept that a number of the requirements needed correcting to be clearer and requested, at a late stage, that contravention 2 and related requirement 2 should be removed.
10. Whilst the requirements were confused, unclear and ambiguous, they did give some indication of what the Council required to be done. Given that the LBEN was not withdrawn following the letter from The Planning Inspectorate, I considered it would be appropriate to discuss at the hearing whether the LBEN could be corrected to overcome these issues.
11. Although it would have been possible to correct the LBEN to address the defects, such a change would have meant a substantial re-writing. It would have caused injustice to the appellant as, particularly in relation to contravention 7 and related requirement 7, it appeared necessary for works to take place above basement level that would have gone beyond what was required by the LBEN that had been served. Consequently, I indicated at the hearing that I was likely to find it invalid. The Council then withdrew the LBEN.

12. The PPG makes clear that failing to review their case promptly following lodging of an appeal as part of sensible case management can constitute unreasonable behaviour. In addition, it suggests that an application for an award of costs can be made where an enforcement notice has been withdrawn. Given the contents of the arguments on nullity put forward by the appellant and subsequent letter from The Planning Inspectorate, I consider that sensible case management including review of the requirements to which the Council's attention had been drawn should have led to an earlier withdrawal of the LBEN. I accept that my reasons to consider the LBEN invalid differed to some extent from the arguments of the appellant and previous letter from the Planning Inspectorate. Nevertheless, they indicated serious deficiencies to the LBEN such that the reasons for invalidity should have been identified by a thorough review of the requirements.
13. I note that the Council have suggested that they have been investigating other contraventions that may lead to the issue of another LBEN, that could include some or all of the contraventions in this LBEN. Whilst I was unable to determine the appeal made on a number of grounds set out at Section 39 of the Planning (Listed Building and Conservation Areas) Act 1990, it is possible that such a LBEN could be subject of an appeal. I have taken that into account in coming to my decision on the award of costs.
14. On balance, therefore, I conclude that there was unreasonable behaviour on behalf of the Council that resulted in unnecessary or wasted expense in relation to the procedural and substantive grounds relating to arguments on nullity and invalidity, including at the hearing. I shall make a full award of costs on that basis.

Appeals A and B

15. The appellant has suggested that the unnecessary or wasted expense included that part of the hearing relating to appeals A and B. They indicate that the hearing would not have been necessary in relation to these appeals. However, they indicated a hearing would be necessary in the appeal form submitted and in their supporting statement. Whilst this refers to the relationship between that enforcement notice and the LBEN, it also refers to the need to test evidence by questioning participants. I note that they envisaged an advocate representing the appellants at the hearing, indicating that they would have been present had the appeal proceeded solely relating to these appeals. I can't be certain that a hearing would have been granted as the choice of procedure would have been at the discretion of the appointed Inspector, although it appears possible given the matters raised in evidence. Nevertheless, on balance I consider that there was no unnecessary or wasted expense in relation to these appeals.
16. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs must fail in relation to appeals A and B.

Costs Order

17. 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 London Borough of Camden shall pay to JL Center Holdings LLP, the costs of

the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to appeal C; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to London Borough of Camden, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

AJ Steen

INSPECTOR