



Costs Decision

Site visit made on 28 September 2010

by **John G Millard DipArch RIBA FCI Arb**

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

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Decision date:
21 October 2010

Costs application in relation to Appeal Ref: APP/Q1445/A/10/2127690 Land at The Brighton Forum, 95 Ditchling Road, Brighton BN1 4SB

- The application is made 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 made by Topcentre Limited for a full award of costs against Brighton & Hove City Council.
- The appeal was made against failure to determine an application within the prescribed period for a variation of condition 3 of listed building consent Ref: 2006/03576 to enable doors to units to be solid to comply with Building Regulations and the wishes of the users.

Summary of Decision: The application is refused.

Reasons

1. Circular 03/2009 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 costs to incur unnecessary or wasted expense in the appeal process.
2. The thrust of the appellant's case for an award of costs against the Council is that the Council behaved unreasonably in failing to reach a decision on the application for an amendment to condition 3, thereby necessitating an appeal that ought not to have been necessary. The Council acknowledges that there was a delay in determining the application but draws attention to extensive correspondence with the appellant's agent in which, firstly, it was made clear at an early stage that the use of solid doors was not acceptable and, secondly, the availability of suitable fully glazed partitioning systems, including glazed doors, was confirmed. Whilst the correspondence did not constitute a formal determination of the application, it clearly indicated that the variation sought was unlikely to be granted.
3. Having considered all the evidence before me, it is clear that the appellant was aware, from the outset, that fully glazed doors were a specific requirement of the listed building consent. Had solid doors been considered acceptable by the Council, condition 3 would clearly not have been framed in the terms it was. Despite this, the appellant committed to and proceeded to install a partitioning system which was apparently not able to accommodate fully glazed doors and which therefore failed to satisfy the requirements of the condition.
4. The only conclusion I can draw from this is that either insufficient research was carried out before committing to the chosen partitioning system so that the unavailability of glazed doors was not identified in due time, or the appellant considered compliance with the condition to be unnecessary, or it was assumed

that relaxation of the condition would be a simple formality. Whichever is the case, it appears to me that it was the appellants actions in proceeding with a non-compliant partitioning system, in breach of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), which ultimately led to the need for this appeal.

5. I find the appellant's contention that the Council demonstrated a '*loss of perspective in respect of this matter*' and that the use of solid doors should have been dealt with as a '*minor transgression of the requirements of the condition*' unjustified. The Council, as local planning authority, has a statutory duty under section 66(1) of the Act to have special regard to the desirability of preserving the listed building and any features of special architectural or historic interest it possesses and I can find nothing in the Council's actions which was not consistent with the exercise of this duty.
6. It was the clearly expressed view of the Council from the very outset that the use of fully glazed corridor partitions and doors was key to making the proposal to sub-divide the space acceptable. When the appellant sought a variation which, in the Council's eyes, would have diminished the value of the condition as a means of preserving one or more aspects of the building's special interest, it was not inappropriate that its officers should explore means by which the condition could be satisfied. This cannot be regarded as unreasonableness on the part of the Council and could, in some respects, be seen as justification for the delay in determining the application.
7. Notwithstanding my conclusion on the appeal, I am satisfied that there were reasonable planning grounds for the Council to adopt the stance it did in relation to the requirements of and need for condition 3. Accordingly, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and that an award of costs is not justified.

Formal Decision

8. I refuse the application for an award of costs.

John G Millard

INSPECTOR