



Costs Decision

Site visit made on 5 June 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Costs application in relation to Appeal Ref: APP/B4215/C/19/3242449 222 Burton Road, Manchester M20 2LW

- 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 is made by Mr Colin Lowes for a full award of costs against Manchester City Council.
 - The appeal was against an enforcement notice alleging the material change of use of first and second floors from self-contained flat (Class C3) to kitchen, storage and ancillary staff area in connection with the ground floor restaurant (Class A3), the installation of a shop front, retractable awning at front and flue to rear elevation and the erection of a single storey rear timber extension.
-

Decision

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

Reasons

2. 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. In the reasons for issuing the enforcement notice, the Council cited an objection 'in principle' to the alleged change of use on the basis that the premises is within an area where it is seeking to retain and increase the availability of housing. The most relevant policies are SP1 and H6 of the Core Strategy¹. As explained in my Decision, the policies are non-specific and are largely aimed at new development. They are not restrictive in terms of changes of use, such as that enforced against. Nonetheless, the policies can be read in the way the Council sets out, as they do seek to promote housing choice in south Manchester.
4. However, there is clearly is room for interpretation, evidenced by the Council's stance taken in relation to an application at No 128A Burton Road (Ref: 125547/FU/2019), where there was no 'in principle' objection to a similar development albeit in a different location. The full balance of considerations that informed the decision at No 128A is not before me. Hence, I am unable to conclude that the Council has been inconsistent in its approach to similar development. Ultimately, the policies cited in the notice are relevant and the Council's application of those policies is not irrational.

¹ Core Strategy: Development Plan Document (July 2012).

5. I note that the policy objection did not form part of the reasons for refusal of a previous decision at the appeal premises (Ref 122105/FO/2018), which also concerned a change of use from residential. This illustrates the nature of the policies and the fact that their wording is not explicit.
6. There is previous planning permission at the appeal premises (Ref 080982/FO/2006/S1), which included a replacement flush fitting shop front. The applicant argued that this represents a significant fallback position to which the Council failed to give due weight. There is a dispute over whether or not that permission has lapsed. The applicant argued that the development has been implemented, as a result of the rear extension, whereas the Council countered that the rear extension differs from the approved plans and, furthermore, condition 2 (a condition precedent) had not been properly discharged. It is not for me to make a finding on this matter in the context of this application. However, there is merit in the Council's case as there is evidence that the permission has lapsed. As such, I find that the Council was not at fault for not taking the claimed fallback position into account.
7. The applicant also argued that the Council has acted inconsistently in respect of its assessment of the awning erected at the premises. I am directed to a planning permission at No 244 Burton Road (Ref: 115983/FO/2017) and a similar shop front and awning at no 220 Burton Road, although I understand the awning is unauthorised. Again, the Council is entitled to make a planning judgement depending on the site-specific circumstances and the policy in force at the time of its decision. In those cases, the Council considers the circumstances or policy backgrounds were different. I do not find that this amounts to determining similar cases in an inconsistent manner.
8. The Council's assessment of the flue was based on the visual impact of the structure and its effect on the character and appearance of the Conservation Area. The reasons set out by the Council were clearly explained and, although I ultimately disagreed with that assessment, I do not consider the Council acted unreasonably in reaching its findings, or was inconsistent having regard to its handling of another application for a flue at No 244 Burton Road (Ref: 111074/FO/2016/S1).
9. The timber extension has reduced the area available for waste storage and it is apparent that this is a particular issue in the local area. The Council was seeking to ensure the situation was not made any worse. While I found the waste management facilities to be adequate, the Council reached a different view. I consider that the stance taken was not unreasonable given the local circumstances.
10. Overall, I find that the Council has exercised planning judgement. It was able to explain adequately its reasons for issuing the notice by reference to policy and objective analysis. There is limited evidence that applicant's property has been singled out as an exception or that they have been treated unfairly.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Debbie Moore Inspector