



Costs Decision

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

**Costs application in relation to Appeal Ref: APP/P4605/X/20/3252081
399 Boldmere Road, Sutton Coldfield B73 5EX**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Ms P Towers for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a House in Multiple Occupation (HMO) occupied by 7 residents (Sui Generis).
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Decision

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

Reasons

2. Paragraph 028 of the Planning Practice Guidance (PPG) states the established premise that parties to an appeal normally meet their own costs. However, the PPG in paragraph 030 advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and thereby has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
3. The basis of the applicant's claim arises from the Council's assessment of the proposal at the application stage citing "its error in distinguishing between planning policy merit on the one hand, and lawfulness of the other".
4. The difference between the parties turned on the interpretation of the evidence of whether one further resident would result in a material change in use of the property and the application of case law. The appellant says there is "no evidence to demonstrate a change to the character of the dwellinghouse would occur".
5. Section 192(2) of the Town and Country Planning Act 1990 as amended indicates that if the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The Council's reason for refusal is based on fact and degree which, by its nature relies on a planning judgement of the evidence used to support the application.
6. In my opinion, the appellant's view that there would be no change to the character of the dwellinghouse was neither substantiated nor supported by

their evidence. The appellant has not explained how the addition of one further resident would not affect the living environment within the property or its surroundings. Instead the statement refers to various judgements which consider how matters relating to a material change of use of land should be considered. I acknowledge that the Council's "accusation of circumventing planning process" may appear unreasonable, however, it did not contribute to the refusal of the certificate of lawful use or development.

7. The Council's conclusion on the matter was correctly based on its planning judgement of the facts presented, as directed by the judgements cited by both parties. I do not consider that the Council failed to properly evaluate the LDC regarding whether the proposal would constitute a definable change in the character of the existing use such that a material change of use would occur. Consequently, I consider that there was no fundamental defect in the Council's approach in its decision making.
8. Overall, I am not satisfied that it has been clearly demonstrated that there was unreasonable behaviour on the part of the Council that led the appellants to incur unnecessary or wasted expense. I conclude accordingly that an award of costs, either partial or in full, is justified and the costs application should not succeed.

S Hanson

INSPECTOR