
Costs Decision

Unaccompanied site visit made on 25 October 2021

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2021

Costs application in relation to Appeal Ref: APP/D2320/X/21/3277353 20, Briery Hey, Bamber Bridge, Preston, PR5 8HU

- 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 SBL Care Services for a full award of costs against Chorley Borough Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for use of the dwellinghouse as a home for the care of up to two young persons under the age of 18 years old, with 24 hour care provided by carers operating on a shift basis.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The appellants submit that the Council failed to consider the proposal in the context of well-established case law, which they had explicitly drawn to the Council's attention. In its determination of the application, the Council simply decided that the new use fell into a different Use Class¹ and maintained that '*no further assessment or judgement is required*'. However, in *North Devon*², it was made clear that a non-material change of use can take place. Moreover, in the 3 appeal decisions which were submitted by the Council as part of its case, the materiality of the change of use was explicitly considered by the Inspector in each case.
3. I have seen no response from the Council.
4. 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.
5. The PPG gives examples of unreasonable behaviour by local planning authorities which include '*acting contrary to, or not following, well-established case law*' and '*failure to produce evidence to substantiate each reason for refusal on appeal*'.
6. In my view, the Council has failed to properly take account of the quoted case law and the way it has been interpreted in the 3 appeal decisions which it submitted to support its case. Unless a change of use is *material*, it does not

¹ A change from Class C3 to Class C2 of the Town and Country Planning (Use Classes) Order 1987, as amended.

² *North Devon D.C. v FSS* [2003] EWHC 157 Admin

fall within the definition of development set out in section 55(1) of the Act, as amended. Accordingly, in each of the above cases, a 2 stage approach was adopted. First, an assessment was made as to whether the proposed use fell into a different Use Class from the existing lawful use. If this question was answered in the affirmative, a further assessment was carried out as to whether the change of use was material. Each of the 3 appeal decisions turned on the specific facts of the case. In the present case, the Council failed to assess the materiality of the proposed change of use and provided no evidence to address the specific facts of the case.

7. In conclusion, I have come to the view that the Council acted unreasonably in this case and caused the appellants costs to incur unnecessary or wasted expense in the appeal process. Accordingly, the application for costs succeeds.

Costs Order

8. 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 Chorley Borough Council shall pay to SBL Care Services the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Chorley Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B.S. Rogers

Inspector