
Costs Decision

Site visit made on 26 April 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Costs application in relation to Appeal Ref: APP/B4215/X/22/3292416 209 Slade Lane, Manchester M19 2AE

- 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 Madj Ltd for a full award of costs against Manchester City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as a 12 bedroom HMO.
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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. The appellant contends that rather than determining the application on the balance of probabilities, the Council appears to have applied a higher test akin to "beyond reasonable doubt". When determining an application for a LDC the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbitas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
4. The Council acknowledges that the property has been periodically used as shared residential accommodation over the years but that the evidence falls short of what is required to demonstrate the continuous use on the balance of probabilities. A range of evidence has been provided, including statutory declarations and other documentation obtained from various web sites and from the Council.
5. However, as set out in the main decision, rather than being sufficiently precise and unambiguous, the evidence is not consistent and does not prove continuous use as a 12 bedroom HMO for a relevant 10 year period. I understand that it should not be rejected simply because it is not corroborated

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

but it lacks the detail and level of evidence required to discharge the burden of proof.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs is not justified.

A A Phillips

INSPECTOR