



Costs Decision

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2022

**Costs application in relation to Appeal Ref: APP/V4630/X/22/3291197
Simon's Restaurant, 520 Chester Road, Aldridge, Walsall WS9 0PU**

- 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 Little Ripley Day Nurseries for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the deemed refusal of a certificate of lawful use or development for the use of the site as a day nursery (Class E).
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Decision

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

Reasons

2. Paragraph 030 of the Appeals section of the national 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 application sought a Lawful Development Certificate (LDC) for the proposed use of the site as a day nursery (Class E). The applicant considers the Council acted unreasonably and that this has directly caused them to incur unnecessary or wasted expense in the appeal process. They consider that despite their justification and reasoning, the council has prevented a lawful use from operating from the appeal site. The costs application is therefore substantive, arising from the merits of the appeal.
4. Furthermore, the applicant considers that the council's second reason given for not issuing the LDC is beyond what had been applied for. The LDC application specifically sought confirmation of the fact that the change of use of the appeal site to a day nursery would not constitute development; it did not propose any other works at all. The question of whether or not an LDC for a proposed use should be granted turns solely on whether the proposal would be lawful as at the date of the LDC application: other matters such as the intention of the development to carry out other unspecified works are not relevant.
5. In determining the LDC application, the council took the view that there had not been a breach of the condition¹ which restricted the use of the appeal site to only be used as a licensed restaurant and tearoom and for staff accommodation. Whilst the council did not respond to the application for costs, its appeal statement acknowledges that the application for the LDC sought

¹ Condition 9 of Planning Permission BC43883P

whether the use alone was lawful. However, it considered that the alterations to the building would facilitate the day care use and therefore included the refusal reason for the operational development to highlight the fact that planning permission would be required. The council considered this important given the sensitive nature of the site and the scale of alterations proposed.

6. The council neglected to understand that an LDC can only be issued for what is actually applied for. It is not open to the decision-maker to imply any additional works into the terms of the description. I therefore find that the council acted unreasonably in having regard to other irrelevant considerations, rather than determining the LDC application solely on the basis of the proposed use described in the application form.
7. However, an award of costs is only justified if the unreasonable behaviour is the cause of unnecessary or wasted expense. As can be seen from the appeal decision, I have come to the conclusion that the council's decision to refuse the LDC application was well-founded. Whilst section 195 of the 1990 Act is clear that my remit is confined to considering whether the refusal was well-founded and not the reasons for it, I see nothing unreasonable in the council's approach to its first reason for refusal of the LDC application.
8. The applicant's costs in bringing the appeal cannot be attributed directly to the council's unreasonable behaviour on the second point, because the LDC application would still have been refused if that unreasonable behaviour had not taken place.

Conclusion

9. I therefore find that while the council behaved unreasonably, that behaviour did not result in "unnecessary or wasted expense" as described in the PPG, and so an award of costs is not justified.

S A Hanson

INSPECTOR