



Costs Decision

Site visit made on 18 November 2022

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

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Costs application in relation to Appeal Ref: APP/M4320/X/22/3300633 9 Winstanley Road, Waterloo, Liverpool L22 4QN

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Liam Wharton of Alternative Approach Ltd for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for proposed change of use from a dwellinghouse (Class C3) to a childrens home (Class C2).
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Decision

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

Background

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 applicant claims the Council has acted unreasonably through not providing a rational reason for refusing the LDC application. It is argued that the Council's decision notice specified irrelevant legislation and the reasoning was based on a misunderstanding of the application of the Use Classes within the Schedule to the Town and Country Planning (Use Classes) Order 1987. It is also argued that the Council has failed to determine cases in a consistent manner, with reference to a very similar proposal on the same road. Finally, the applicant maintains that the LDC should have issued and the failure to do so has delayed a use which should have been confirmed as lawful. This has caused the appellant to incur unnecessary expense in pursuing an appeal which could have been avoided.
4. The Council counters that the officer report clearly sets out the reasoning behind its refusal to grant the LDC, and this was based on planning judgement. There was no unnecessary delay in determining the application. It is also argued that the other case, which is claimed to be similar, was eight years ago and the Council focussed on more recent appeals.

Reasons

5. The Council's decision notice states that there is no provision within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 to change the use from C3 dwellinghouses to C2 Residential Institutions therefore a certificate of lawfulness cannot be issued.

6. As explained in my Decision, the Regulations quoted had the effect of amending the Use Classes Order, so it is the Use Classes Order (as amended) which should be relied upon. In addition, the wording points to a misunderstanding of Section 55(2)(f) of the 1990 Act. This provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. However, the Use Classes Order should not be interpreted as meaning that some change between use classes is necessarily development. The key issue is whether the change is 'material'.
7. The officer report did set out a brief analysis of whether there would be a change in the character of the use. However, the implicit conclusion that a material change of use would occur did not find its way into the reasons for refusing the application. The applicant understood from the decision notice that the proposal was unacceptable on a point of law and it was not apparent that any further assessment had taken place. Given that the decision notice also referred to a Statutory Instrument that was not relevant, I find that this amounted to unreasonable behaviour.
8. In addition, the analysis by the planning officer was limited, and there was scant regard to the information contained in the accompanying Planning Statement, which was accurate and relevant. Further, it is unclear whether the other proposal at No 51 Winstanley Road, which the Council approved, was considered nor how the Council justified reaching a different conclusion.
9. I consider that the Council's assessment of the proposal was limited and that factual information submitted with the application was not properly analysed. The planning officer did have some understanding of the matters at issue, but this was not properly set out in their delegated report. Nor were previous decisions properly assessed for their relevance. Consequently, an invalid reason for refusing the application was provided in the decision notice. A thorough and proper assessment of the application should have been undertaken, based on the correct tests.
10. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Sefton Metropolitan Borough Council shall pay to Alternative Approach Ltd, 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.
12. The applicant is now invited to submit to Sefton Metropolitan 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.

Debbie Moore

Inspector