
Costs Decision

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

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 July 2023

**Costs application in relation to Appeal Ref: APP/Z4310/X/23/3317515
103 Claremont Road, Liverpool L15 3HJ**

- 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 Miss Hinakshi Patel for a full award of costs against Liverpool City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for student accommodation HMO (Use Class C4).
-

Decision

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

Reasons

2. The Planning Practice Guidance 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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The appellant has stated that the LDC application was submitted 3 months before the Article 4 Direction was in place and therefore permission for the material change of use of the property to student accommodation HMO (Use Class C4) was not required. That may be the case, but the application submitted was not for a proposed use but for an existing use. Therefore, the Council's refusal and the main appeal decision is based on the premise that evidence is required to demonstrate that on the balance of probabilities the use for which the LDC is being sought began within the 10 years prior to the application, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years that the property was occupied as such, on 23 March 2021.
4. Secondly, it is stated that the Council then took 19 months to determine the application and in that time the Article 4 direction came into place. The appellant argues that the LDC was refused on the Council's understanding that the appellant could not demonstrate that the 3 people living there were not related and therefore it did not constitute a HMO. That is indeed the basis

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

upon which the Council made their decision and I do not find this approach to be unreasonable.

5. It is also quite clear that the decision to refuse the LDC was not at all based on the Article 4. Indeed, as stated in my Main Decision, I agree with the approach taken by the Council and have found that their decision was well-founded and based firmly on the evidence presented by the appellant and specifically the lack of evidence with respect to the occupation of the property as a C4 HMO at the relevant time. I can understand the appellant's frustration at the length of time taken to determine the LDC, but the delay was not a malicious act on the part of the Council to refuse the LDC on the basis of the Article 4 Direction.
6. Finally, the appellant has stated that upon issuing the LDC refusal the Council threatened to serve an enforcement notice on the appellant for using the property as a HMO. The Council is perfectly entitled to consider the expediency of taking enforcement in a case where a LDC is refused. That cannot be found to be unreasonable behaviour. Nor in this case do I find that the Council's threat of action will have resulted in wasted expense in the appeal process.
7. In a case such as this it is important to fully understand what was applied for and the basis for the refusal. In this particular appeal the LDC relates to an existing development rather than a proposed development and that is the basis upon which the Council and I have made our decisions. There is nothing to prevent the appellant from submitting a further application for an LDC for a proposed use or development with respect to this matter.

Conclusion

8. I 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