



## Costs Decision

Site visit made on 13 February 2024

**by K Lancaster BA (hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 June 2024**

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### **Costs application in relation to Appeal Ref: APP/A2335/W/23/3330242 Co-Op Building, John Street, Carnforth, Lancaster LA5 9DA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Marshaw Developments Ltd for a full award of costs against Lancaster City Council.
  - The appeal was against the refusal of planning permission for the change of use of commercial building into six apartments (C3) without complying with a condition attached to application Ref 22/00393/PAC, dated 6 June 2022
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### **Decision**

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

### **Reasons**

2. Parties in planning appeals normally meet their own expenses. However, 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 PPG goes on to provide examples of unreasonable behaviour by Local Planning Authorities (LPA), which include amongst other things preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations, acting contrary to, or not following, well-established case law and not determining similar cases in a similar manner.
4. The appellant submits that the LPA has behaved unreasonably and is seeking a full award of costs. The appellant alleges that the LPA delayed or thwarted development that should clearly have been permitted and that they failed to provide substantive reasons for refusing the application. The appellant also alleges that the Council acted contrary to well established case law.
5. Whilst the LPA is entitled to reach their own conclusions on the evidence before them, in this particular case, the Council's reasons for refusal related to whether the variation, as submitted, could be considered under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). In reaching this conclusion the Council failed to have regard to established case law, including the Pressland Case<sup>1</sup> which confirms that S73/73A Town and Country Planning Act 1990 (the Act) can be used to vary a condition imposed on a planning permission granted by the GPDO

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<sup>1</sup> Pressland vs London Borough of Hammersmith and Fulham [2016] EWHC 1763 (Admin)

6. The PPG states that S73 cannot be used to change the description of the development. However, it also states there is no statutory limit on the degree of change permissible to conditions under S73, but the change must only relate to conditions and not to the operative part of the permission. Instead, their assessment was based on the provisions of Class MA of the GPDO. The PPG makes clear that a local planning authority is at risk of an award of costs if it acts contrary to or does not follow well established case law.
7. Furthermore, the Council did not provide a statement to support their position, and when further submissions from the parties have been sought, have failed to substantiate their original reasons for refusal, or provide reasons why the variation would conflict with the operative part of the permission.
8. Therefore, as I have found that the development applied for was therefore capable of being dealt with under S73A and, since the Council did not raise any specific objections on any other relevant grounds, had the Council followed clearly established case law, and guidance set out in the PPG, an appeal could have been avoided.
9. This constitutes unreasonable behaviour contrary to the guidance in the PPG and the appellant has consequently been faced with the unnecessary expense of lodging the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is warranted.

### **Costs Order**

10. 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 Lancaster City Council shall pay to Marshaw Developments 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.
11. The applicant is now invited to submit to Lancaster City 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.

*K Lancaster*

INSPECTOR