



Costs Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 August 2024

**Costs application in relation to Appeal Ref: APP/G3110/X/23/3325184
23 Iffley Road, Oxford OX4 1EA**

- 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 Mr Anwar Ali for a full award of costs against Oxford City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as an 8 bedroom house in multiple occupation.
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Decision

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

Reasons

2. The Planning Practice Guide (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 for costs is made on procedural and substantive grounds. A full claim for costs is made on the basis that it should not have been necessary for the appellant to make an appeal to the Secretary of State.
4. The PPG advises that local planning authorities (LPA) are required to behave reasonably in relation to procedural matters at appeal. Examples of unreasonable behaviour include: lack of co-operation with the other party¹. In relation to substantive matters, a LPA is at risk of an award of costs if, for example, they act contrary to, or not following, well established case law or refusing to enter into pre-application discussions or when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues being narrowed, thus reducing the expense associated with the appeal².
5. It is the Applicant's case that during the application process the LPA refers to four separate dates on which it indicated to the Appellant that he would have to provide evidence of the continuous, ongoing use, in order to justify the grant of an lawful development certificate (LDC). The Applicant considers that the LPA's failure to properly and clearly define the relevant time period against which any evidence must be assessed is unreasonable behaviour.

¹ PPG Paragraph: 047 Reference ID: 16-047-020140306

² PPG Paragraph: 049 Reference ID: 16-049-20140306

6. In addition, post submission the LPA was not willing to provide the Applicant with the opportunity to submit any additional information to cover the period 'prior to September 2014'. This demonstrates unreasonable behaviour by the LPA and the Applicant has had to incur wasted expense in the appeal process.
7. The application for a LDC was submitted on and dated 29 March 2023. It sought to demonstrate that the property had been used continually as an 8 bedroom house in multiple occupation (HMO) for at least 10 years prior to that date.
8. On receipt of the application the LPA requested a block plan and floor plans to validate the LDC application as well as a request for the Appellant to submit "*signed tenancy agreements to evidence the time frame it has been a HMO, going back as far as February 2012 to current day*". Following subsequent correspondence, the application was validated with submitted scaled floor plans on 17 April 2023.
9. There are clearly some errors in the Council Officer's Delegated Report (DR). Reference is made in the "Assessment" section to it being necessary to demonstrate that the use has continued for a period of ten years or more before the date of this application, "*in this case 11 April 2022*". However, the DR sets out at the beginning of the report in the "Consideration" section that the relevant assessment period is ten years before the date of the application, with the application date stated as 29 March 2023. Reference is also made in the "Assessment" section to the submitted information not providing evidence of "*7 or more occupants for a continuous period since at least March 2013*". Moreover, the Council's decision clearly sets out in its reason(s) for refusal that the relevant date is 29 March 2013.
10. Having regard to all the above, some errors are made by the Council both in the DR and in a request for documents for validation. However, the Applicant was professionally represented and considering the correspondence that took place with the Applicant's agent and the LPA during the validation process, he was clearly aware of the "relevant date". Furthermore, it is clear from reading the DR as a whole, and the Council's decision letter, that the LPA made their assessment of the evidence having regard to the correct relevant date, i.e. 29 March 2013. The contents of the DR clearly show that the LPA understood the provisions of Section 191(4) of the Town and Country Planning Act 1990, as amended (the Act).
11. I have considered the section in the DR relating to "Enforcement Notices". Whilst the final sentence appears to suggest that enforcement action cannot be taken in respect of the use, it is clear from the opening sentence of this section that the Officer is considering the provisions of Section 191(2) of the Act, in relation to whether a use is lawful. The DR advises that the use of the property as an 8 bedroom HMO was not in contravention of any enforcement notice. The DR goes on to conclude that the LDC should not be granted as the use as a 8 bedroom HMO has not been demonstrated.
12. I have also had regard to the correspondence between the Council Officer and Applicant's agent in relation to additional information that may be required, and I am aware that a previous application for a LDC had been refused by the Council in 2022. As set out above the Applicant was professionally represented and the onus is on the Appellant to provide evidence to support their case. The LPA have a duty to determine the application within the statutory time for the

determination of such applications and they gave the Appellant an opportunity to withdraw and resubmit the application. I do not therefore consider that the LPA acted unreasonably in this regard.

13. It can be seen by my decision that I found the Council's decision to refuse a LDC well-founded. For the reasons set out above the LPA did not act unreasonably either procedurally or in relation to substantive matters. The appeal could not therefore have been avoided.
14. I therefore conclude unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated, and an award of costs is therefore not justified.

Elizabeth Pleasant

INSPECTOR