

Costs Decision

Site inspection on 21 November 2024

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 27th November 2024

Costs application by SGL Group Ltd in connection with appeal ref:

APP/Z4310/X/24/3339688

44 Alderson Road, Liverpool L15 2HL

- The application was made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by Liverpool City Council to grant a certificate of lawful use or development.
 - The application was made by SGL Group Ltd for an award of costs against Liverpool City Council.
 - The appeal was made by SGL Group Ltd. The Application for a Certificate of Existing Lawful Development for a House in Multiple Occupation for 3 to 6 persons, (Use Class C4), was made under section 191(1)(a) of the Act in respect of 44 Alderson Road, Liverpool L15 2HL.
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Decision

1. The application for an award of costs is not allowed.

Submissions made by SGL Group Ltd

2. Liverpool City Council unreasonably refused to grant a Certificate of Lawfulness. The Case Officer attached significant weight to objections from neighbours. One objector said the property was vacant, the other said the property was occupied by a family. There had been a failure to contact the applicants Agent prior to issuing the decision to allow for such matters to be discussed. That was contrary to Para 006 of Planning Practice Guidance for Lawful Development Certificates, which states: *"If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence."*
 3. Within the Officer's Report, the Case Officer said the evidence was *"not convincing enough to demonstrate beyond reasonable doubt that the property has been in continuous use as a 3-6 bedroom HMO before 17 June 2021 and therefore it cannot be considered that a lawful certificate can be granted to confirm lawful C4 Use of the property on the 8th November 2023."* It showed the wrong test of beyond reasonable doubt instead of the correct test of a balance of probability was being applied.
 4. Those instances of unreasonable behaviour led to an unnecessary appeal, resulting in the Applicant incurring otherwise avoidable costs.
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Response – Liverpool City Council

5. The Council did not respond.

Inspector's conclusions

6. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process. Parties in a planning appeal normally meet their own expenses. Costs do not, as a rule, follow the result. However, where a party has – (1) behaved unreasonably and – (2) this has directly caused another party to incur unnecessary or wasted expense, they may be subject to an award of costs. However, the power to award costs is limited to those necessarily and reasonably incurred in the appeal process. Expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event. Costs applications may relate to events before the appeal or other proceedings was brought, but costs that are unrelated to the appeal or other proceedings are ineligible - *Para: 032 PPG*.
7. Unreasonable behaviour during the application process can be taken into account. There were 2 particular complainant matters. It appears that comments made by 2 local objectors had not been revealed to the Applicants by the Council before they made the decision. However, although that was a failure by the Council to follow national guidance, the effect on deliberations before the decision was made should have been minimal, judging by the objectors limited and conflicting evidence.
8. The Council Officer report on the application for a certificate of lawfulness should have referred to the normal civil test of evidence being on the balance of probabilities, not that of the criminal test of beyond reasonable doubt. That is such an obvious error it was surely a mere slip. I saw nothing that suggested beyond that inappropriate reference to the test that such rigour was applied to the application.
9. The Council's refusal to issue a certificate of lawfulness was correctly based upon their consideration that insufficient persuasive supportive evidence had been put forward by the Applicants. That I found in favour of issuing a certificate of lawfulness is not an indication that the Council's case was so woeful or inappropriate that an appeal was unnecessary. There was no degree of unreasonable behaviour that merits an award of costs.
10. The application for costs needed to clearly demonstrate how any alleged unreasonable behaviour resulted in unnecessary or wasted expense in relation to the appeal against the enforcement notice. That was not done.

DECISION - COSTS ORDER

11. No order as to costs is made.

John Whalley

INSPECTOR