



Costs Decision

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by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 DECEMBER 2024

**Costs application in relation to Appeal Ref: APP/P4605/X/23/3333826
193 Holyhead Road, Birmingham B21 0AS**

- 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 Shokat Zaman (Care & Support Services Ltd) for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of a certificate of lawful use proposing a change of use from a dwelling (Class C3) to children's care home, for a single child with three carers sleeping overnight and working on a rota basis. (Class C2)
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Decision

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

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 applicant claims that the appeal should not have been necessary because fundamental errors were made by the Council in determining the Lawful Development Certificate, which led to the refusal and the subsequent appeal. Specifically, the applicant indicates that: -
 - The Council incorrectly quotes from the appellant's Planning Statement, referring to a proposed use of Class C3(b), rather than Class C2 as indicated in The Town and Country Planning (Use Classes) Order 1987 (as amended) ('UCO').
 - Issues, such as the amount of private amenity space and fear of crime, were taken into account when they are not relevant in the determination of an LDC application.
 - The Council did not follow or acted contrary to well-established case law¹, when determining the application.
 - The Council outlined that information was deficient in certain areas in its report when it had been provided as part of the LDC application. Specifically details on external and internal alterations to the property.
4. The Officers Delegated Report indicates that the proposed use is Class C3 (b), rather than Class C2 of the UCO. However, Class C3 (b) of the UCO is only referenced under the 'Proposal' section and appears to be an administrative error in the drafting of the report. When read as a whole, the Officer Delegated Report

¹ *SSETR v Waltham Forest LBC [2002] EWCA Civ 330*

considers the proposed Class C2 use set out in the application. For this reason, I do not regard this as a fundamental error that led to the refusal of the LDC application and the subsequent appeal.

5. I acknowledge that planning considerations, such as the amount of private amenity space and a fear of crime would not typically be considered when determining whether a change of use is material and amounts to development². However, based on the evidence before me, the LDC proposal was not refused due to the amount of amenity space or due to a fear of crime from the proposed use. The applicant has also not submitted any additional information with the appeal submissions to address these matters. As such, the Council's actions in this regard do not amount to unreasonable behaviour, which has resulted in unnecessary or wasted expenses in the appeal process.
6. The Council cites the highlighted *case/law*³ in its Officer report, and correctly asserts that a comparison between the proposed use and the actual previous use is what is required when assessing the LDC. The Council did have regard to the information provided on the previous use, but ultimately it considered it as insufficient to make a comparison. Notwithstanding my decision on the accompanying appeal, determining whether the information on the actual use is sufficient to make a comparison is a subjective matter, and one for the decision maker to determine. As such, the Council are entitled to come to a different view on this, and I do not view its actions as acting contrary to, or not following, the well-established case law highlighted.
7. The Council's failure to have regard to the details submitted on the physical changes to the property is disappointing and could be regarded as unreasonable behaviour. However, the Council's main concerns were with respect to the information on the actual previous use, rather than any significant concerns over the external or internal changes to the property. As such, in my judgement, its involvement in the Council's assessment of the proposal would have not changed the Council's decision, making the appeal avoidable.
8. I can understand the Council's decision to refuse the LDC would have been frustrating for the applicant. However, their actions fall short of what I would regard as unreasonable behaviour, which has resulted in unnecessary or wasted expense at the appeal stage, as described in the Planning Practice Guidance.

Conclusion

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and a full award of costs is not warranted.

M. P. Howell

INSPECTOR

² As defined in section 55 of the Town & Country Planning Act 1990

³ *SSETR v Waltham Forest LBC [2002] EWCA Civ 330*