



Costs Decision

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by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Costs application in relation to Appeal Ref: **APP/Z4310/X/24/3348111**

- 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 Liverpool City Council for a full award of costs against Miss Keren O'Rourke.
- The appeal was against the refusal of the Council to issue a certificate of lawful use or development for a house in multiple occupation for 3-6 persons (use class C4)

50 Russian Drive, Liverpool, L13 7BT

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 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 Council asserts that at lawful development certificate (LDC) application stage, it was not aware that any of the Shorthold Tenancy Agreements were made into Periodic Tenancy Agreements (i.e., clause 4.2) and hence that occupation by individuals exceeded six months. It claims that had the appellant made the Council aware of this, coupled with additional information provided as part of the appeal, it would likely have issued an LDC and hence time and expense involved in the appeal process would have been avoided.
4. The onus is on the appellant to make their case in respect of an LDC. I agree with the Council that it was incumbent on the appellant to have provided more clarity about the tenancy agreements at planning application stage, particularly in terms of clause 4.2, and what this meant in terms of the length of time of occupation by individuals.
5. The evidence is that upon receipt of the refusal of the LDC, the appellant sent a letter to the Director of Planning and Building Control on 16 May 2024. In that letter, which pre-dates the date of the appeal of 15 July 2024, the appellant states that *'the tenancy agreements provided are for an INITIAL fixed term of 6 months (i.e., a minimum stay of 6 months). However, clause 4.2 of the Tenancy Agreements state: if the Tenant stays on after the fixed term with the consent of the Landlord, a new tenancy will arise that will run from month to month or week to week ('a periodic tenancy).'*

6. It is clear from the above letter that the appellant was seeking to make the local planning authority (LPA) aware of clause 4.2 of the tenancy agreements and prior to the appeal being lodged. This matter is also referred to in the appellant's appeal statement of case. However, there is an important distinction between correspondence that post-dates the refusal of the LDC application and the LDC application evidence itself.
7. I do not have any evidence before me that the appellant received a response from the Council about the above letter and prior to the appeal being lodged. However, the evidence is that at LDC application stage, the appellant had not provided sufficient clarification and information about clause 4.2 (including associated occupation and timescales) and indeed whether any of the tenancy agreements had become periodic tenancies. While I have concluded, on the balance of probability, that the evidence is now sufficiently precise and unambiguous to justify granting an LDC, it was open to the appellant to reapply to the LPA for an LDC with this additional information, rather than to lodge an appeal. It is noteworthy that the Planning Inspectorate's Certificate of Lawful Use or Development Appeals: Procedural Guide (2024) states that '*appellants should be confident at the time they make their appeal that they have a clear case and do not need to rely on evidence that was not available to the LPA when it made its decision*'.
8. It is necessary for me to consider whether unreasonable behaviour has occurred and whether any such unreasonable behaviour has resulted in wasted time and expense in the appeal process. In this case, the evidence is that the appellant did supplement her appeal with additional evidence over and above that which was before the LPA (i.e., part of the LDC application) when it made its decision. In this regard, she has relied on evidence that was not available to the LPA when it made its decision. While such evidence did ultimately result in the LPA deciding not to contest the appeal at statement of case stage (N.B. no final comments were made by the LPA), it was nonetheless open to the appellant to have reapplied to the LPA for an LDC with the additional evidence.
9. While I note the Council's guidance, which suggests what kind of information might be submitted as part of an LDC application (this also emphasises that other information may be needed and that the onus is on the appellant), the tenancy agreements were a central reason which led to the LDC application being refused. In this case, I find that the LPA's assumption about six-month occupation was reasonable based on the evidence that was before it at that time. I find that had the LPA been provided with all the evidence which now accompanies this appeal at LDC application stage, it would have been able to grant an LDC and hence the appeal would have been avoided. I find that the appellant had the option of reapplying for an LDC (with the additional evidence) and instead unreasonably opted to pursue the appeal.
10. I therefore conclude that unreasonable behaviour resulting in unnecessary and wasted expense has occurred and a full award of costs is warranted.

Costs Order

11. 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 Miss Keren O'Rourke shall pay to Liverpool City Council the full costs of the appeal

proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Centre if not agreed.

12. The applicant is now invited to submit to Miss Keren O'Rourke, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Hartley

INSPECTOR