



Costs Decisions

Inquiry held on 4 February 2025

Site visits made on 4 and 5 February 2025

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

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Costs applications in relation to Appeal Ref: APP/B4215/C/24/3352312

Land at 101 Manchester Road, Chorlton, Manchester M21 9GA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is made by Chorlton Takeaway Sales Limited for a full award of costs against Manchester City Council.
 - **Application B** is made by Manchester City Council for a partial award of costs against Chorlton Takeaway Sales Limited.
 - The Inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the premises to a hot food takeaway (Sui Generis).
-

Decisions

Application A

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

Application B

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

Application A

The submissions for Chorlton Takeaway Sales Limited

3. The applicant indicates that the Council relied on evidence from online sources and images to make their case, rather than witnesses who would have been able to provide evidence of the use of the premises when the material change of use was alleged to have taken place. The applicant stated that if the Council had cooperated with the appellant and undertaken a more diligent investigation of the facts he put forward, it would have avoided the need to serve the notice.
4. Furthermore, the applicant considers the Council's behaviour with respect to its consideration of the ground (a) appeal and the deemed planning application as unreasonable. The applicant indicates the Council failed to give proper consideration of the lawful use as a takeaway, which demonstrated that the principle of the use was not objectionable. Furthermore, the Council did not cooperate with the appellant and his agent during the investigation stage or agree that there was a fallback use. The Council also did not address the implications of the previous use as a restaurant as part of the ground (a) appeal assessment.
5. As such, the applicant indicates that there was a lack of cooperation, and the Council prevented a development that should have clearly been permitted with conditions. They also did not substantiate each reason for refusal and put forward vague or inaccurate assertions about the development's impact.

The response by Manchester City Council

6. The Council maintained that the investigation into the breach of planning control was diligent, and they did engage with the appellant. They highlighted various correspondence submitted with the appeal evidence detailing exchanges the Council had with the appellant before formal enforcement action was taken. They stated that in the correspondence with the appellant, they did not deny the applicant's right to revert under section 57 (4) of the 1990 Act, once the requirements of the Notice were complied with by the appellant. However, at that time the Notice had not been served and, therefore, there was no right to revert to the previous use without a formal planning application.
7. With respect to the ground (a) appeal, the Council suggests that there was a lack of evidence from the appellant to address the main issues. As outlined above, they did not deny the applicant's right to revert under section 57 (4) of the 1990 Act. However, they maintain that the appellant did not include sufficient details of the restaurant use to allow the Council to make an accurate comparison with the alleged takeaway use. In any event, the issues surrounding the ground (a) appeal are a matter of planning judgement, and the Council was not being unreasonable by forming an alternative view.

Reasons

8. For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by a more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate¹.
9. An Officer Enforcement Action Report (Action Report) was included with the submissions, which details how the complaint was investigated by the Council. Based on the evidence before me, the Council carried out relevant research into the planning history, attended the site and discussed the complaints with Mr Tayyab Akhlaq before forming a view on whether a breach planning control had occurred. The Council also provided Mr Tayyab Akhlaq with advice on how to resolve the matter via a planning application, before serving the Notice. Although the Council's advice on the right to revert to the previous lawful use may have sounded unreasonable, at that time the Notice had not been issued. As such, planning permission would have been required to revert the premises back to a restaurant.
10. Based on the evidence before me, the Council undertook a diligent investigation to ensure the Notice was accurate and there was a need to take formal action. The applicant may disagree with the Council's conclusions on whether the intervening use was a material change of use. However, this is a planning judgement, based on a matter of fact and degree, and the Council can arrive at a different conclusion. In my judgement, the Council's actions do not amount to unreasonable behaviour that has resulted in unnecessary or wasted expense during the appeal process.
11. It is acknowledged that a takeaway use was granted lawfulness in 2008 and operated for a sustained period of time without complaint. However, based on the evidence before me, the Council did not object to the takeaway use in principle but considered it unacceptable due to the impact on the living conditions of neighbours,

¹ Paragraph: 048 Reference ID: 16-048-20140306

highway safety and public health. The Council has detailed these issues, and harm from the use, in its Action Report, in the reasons for serving the Notice as well as its submissions with the ground (a) appeal. Again, the applicant may disagree with the Council's conclusions on the harm from the use, but this is a planning judgement, and again the Council can arrive at a different conclusion.

12. I appreciate that in my accompanying appeal decision I had regard to the harm associated with the previous lawful use as a restaurant when assessing the ground (a) appeal. However, the information on the fallback use with the appeal submissions was limited, and I do not consider it unreasonable for the Council to have determined that the detail provided with the appeal submissions was not sufficient enough to make an accurate comparison.

Conclusion on Application A

13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Application B

The submissions for Manchester City Council

14. The applicant (Council) has claimed for a partial award of costs based on substantive and procedural issues with respect to the appellant's appeal on ground (c). The Council outline that they suggested at the Case Management conference call that their application for costs would be withdrawn if the applicant did not proceed with the ground (c) appeal. Despite this, the Council indicate that the appellant, who is professionally represented, has proceeded with a ground (c) appeal without providing substantive evidence to support their case.
15. It is also highlighted that information included with Mr Tayyab Akhlaq's proof of evidence can be shown to be manifestly inaccurate or untrue. In particular, his description of the layout and toilet facilities set out in his proof of evidence. Procedurally, new evidence in the form of a letter by Mr Weifeng (Victor) Chen and an email from Mr Iqbal were also submitted with Mr Tayyab Akhlaq proof of evidence. The Council has indicated that the evidence was new and submitted after the appropriate deadlines when they could have been submitted earlier.
16. The Council states the appellants' behaviour is unreasonable and has resulted in them spending additional time and resources on an Inquiry that could otherwise have been avoided. The PPG indicates that the appellant is at risk of an award of costs being made against them if a ground of appeal had no reasonable prospect of succeeding as well as if information with the appeal is shown to be manifestly inaccurate or untrue. The appellant is also at risk of costs if they introduce fresh and substantial evidence at a late stage.²

The response by Chorlton Takeaway Services Limited

17. The appellant outlines that the Ground (c) appeal could not be conducted other than by testing the evidence, which needed to be given under oath. It was not appropriate to deal with the appeal by way of written representations. The Appellant is entitled to pursue the Ground (c) appeal and there is an evidential basis for doing so.

² Paragraph: 052 Reference ID: 16-052-20140306

18. It was also said that if the ground (c) appeal was withdrawn, as requested by the Council, then the Inquiry would not have been conducted and the Council would not have conceded on the matter of the appellant having the right to revert to the previous lawful use. The appellant indicated that there is no concession in respect of the previous lawful use, or the impacts of fallback use in the written submissions.

Reasons

19. 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 expenses in the appeal process.
20. I acknowledge that the ground (c) appeal could have been more robust with first hand evidence, but there were still matters of fact at dispute being contended. Also, given the complexities surrounding the intervening use, it was beneficial for me to hear the evidence under oath and for it to be tested through formal questioning. Although the appellant requested an Inquiry and indicated that the previous tenant could attend to give first hand evidence of its use, ultimately it was my decision to determine the appeal through the Public Inquiry procedure. Notwithstanding my accompanying appeal decision, I do not consider that the appellants ground (c) appeal as having no reasonable prospect of succeeding or the request for it to be dealt with by the Inquiry procedure as unreasonable behaviour.
21. Mr Tayyab Akhlaq's descriptions of the layout and toilet facilities in his evidence are not accurate when comparing it with the photographs attached to the 2020 lease or the indicative licence plan. However, in my judgment, Mr Tayyab Akhlaq's evidence is his recollection of the site when he inspected it in 2023, which is three years after the lease photographs were taken. Furthermore, he also accepted, under oath, that there were differences in the customer area shown on the indicative plan, but the point he was making was that the indicative plan was reflective of where the toilet was located. Although I appreciate the points raised, I cannot say that the statements set out in his evidence are manifestly inaccurate or untrue.
22. The new evidence included was not substantial in size or volume, it did not include any technical data, and the Council did not have to consult anyone to respond. There was also sufficient time to respond to the new evidence before the event took place without an adjournment or additional time being needed. As such, even though the late submission of the evidence was unreasonable, in my judgement, it did not result in any unnecessary or wasted expense as part of the appeal process.

Conclusion on Application B

23. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M. P. Howell

INSPECTOR