
Costs Decision

Site visit made on 18 February 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 15th April 2025

Costs application in relation to Appeal Ref: APP/M4320/X/24/3336414

34 Kensington Road, Southport PR9 0RT

- 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 Mrs Sophie Horton of Phoenix Leaving Care Solutions Ltd for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for existing family home proposed to be a children's care home C2 for two children.
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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 PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the substance of the matter under appeal. It makes it clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both¹.
4. The main thrust of the applicant's case is that the Council considered that there would be multi agency visits to the premises; that its report states that the increase in comings and goings has not been adequately addressed in the appellant's statement; the Council failed to properly consider what the level of movements there would be from a typical three-bedroom family home and based on the evidence and from previous cases, which the Council should have been aware of, no reasonable Council could have arrived at the decision that they did.
5. In a LDC appeal, the onus is on the applicant to make out their case to the standard of the balance of probabilities, the burden of proof in such an application is firmly on the applicant. The applicant is best placed to understand what evidence it has available to it to substantiate its case and is responsible for providing sufficient information to support an application. There is no duty on the respondent to explain what evidence might have been satisfactory nor is there an obligation on the respondent to provide evidence of a contradictory nature.

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

6. As detailed in my substantive decision, the Statement of Purpose submitted in support of the LDC application stated that each placement will be subject to statutory reviewing and that review meetings are held to monitor, evaluate and modify if necessary, the current Placement Plan. It indicates that the resident, social worker, support worker, home manager, parents and any other appropriate parties will attend the meetings. There was no further information within that document to state where those meetings would be held. I have found that at least some of those meetings would more than likely be held at the property given that they are reviewing the individual's progress at the property.
7. With regard to comings and goings from the property I have found that it is unclear as to what the proposed weekly movements associated with the proposed use and the staff, social workers, other support professionals, friends and family of the residents would be. Moreover, the evidence submitted in support of the LDC application provided little evidence regarding the movements generated by the existing use of the property or how it was last used. The evidence required to enable an evaluation of whether, how, or to what extent, the proposed use would be different from the existing use of the property or how it was last used is not one of a notional use but the actual existing or last use of the property.
8. A grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that the proposed use or development would be lawful. As such, each case has to be determined on the basis of the specific evidence submitted with it.
9. As can be seen from my substantive decision, I have agreed with the respondent, as I have found that the applicant's burden has not been discharged in a precise and unambiguous manner. Moreover, I have found that I am unable to conclude that the proposed use of the property would be lawful if instituted or begun at the time of the LDC application. Consequently, I do not consider that the Council were unreasonable to refuse the LDC application.

Conclusion

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

D Boffin

INSPECTOR