

Costs Decision

Site visit made on 9 April 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2025

Costs application by Blue Polygon Ltd

Appeal ref: APP/V4305/X/24/3353196

22 Diana Road, Bootle L20 6EB

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
- The application was made by Blue Polygon Ltd for an award of costs against Sefton Metropolitan Borough Council.
- The appeal 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 Sefton Metropolitan Borough Council grant a certificate of lawful use or development.

Decision: The application for an award of costs is refused.

Submissions made by Blue Polygon Ltd

1. The application was for a full award of costs. The Council had not shown that the level of comings and goings would not be higher than expected in a residential dwelling. The Officer Report made no assessment of the effect of the number of children or carers or frequency of shift changeover.
2. The Council said that because the property was terraced it would mean that using it as a care home would lead to more noise and disturbance to the neighbouring dwellings. That view took no account of the details of the proposed use or how it might result in more noise and disturbance.
3. The Officer Report said changing the use of the residential dwelling (Class C) to a children's home (Class C2) was not considered to be permitted development, and that planning permission would be required. It was accepted that the change of use was not permitted development. But it was necessary to consider whether there would be a material change of use and therefore whether development had occurred.
4. The materiality of the change had not been objectively analysed. That had led to the Appellants' incurring unnecessary or wasted expense in the appeal associated with instructing planning consultants to prepare and submit the appeal.

Response made by Sefton Metropolitan Borough Council

5. The Council Officer's report clearly set out the reasons for why the proposal was considered to be a material change of use and why a Certificate of Lawful Development should not be issued. A High Court judgement was used to justify the reasoning behind the assessment of a material change of use. The report was criticised by the Appellants for, it was said, not having adequately dealt with the increase in comings and goings by staff. But no detail had been provided in relation to staff handover times or how many staff would be on site at a time.

6. The Officer report simply stated that the specific nature of the property being terraced would result in an increase in terms of noise and disturbance to attached dwellings. It was the Council's opinion that those impacts would be more significant when compared to detached or semi-detached properties.

Inspector's conclusions

7. 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 planning appeals 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. 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.
8. In my view, the Appellants' complaint against the actions of the Council went only to the merits of the arguments as to lawfulness of the proposal rather than alleged unreasonable behaviour causing them to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour during the application process can be taken into account, but that might only have applied here had the Council's justification for their refusal to issue a certificate of lawfulness been woefully inadequate or inappropriate. The Council Officer's report and the subsequent representations supporting their refusal to issue a certificate of lawfulness were relevant and suitably considered. Their behaviour in the appeal process was correct.
9. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against the Council is not justified.

COSTS ORDER

10. No order as to costs is made.

John Whalley
INSPECTOR