
Costs Decision

Site visit made on 1 April 2025

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Costs application in relation to Appeal Ref: APP/T5720/X/23/3319056 56 New Barns Avenue, Mitcham CR4 1LF

- 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 Mrs Ning Zhang for a full award of costs against the Council of the London Borough of Merton.
 - The appeal was against the Council's decision to refuse to issue a certificate of lawful use or development (LDC) for the property's use as a HMO (class C4).
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council behaved unreasonably in refusing the application, thereby necessitating the appeal. The applicant also criticises the Council for not reassessing the proposal at the outset of the appeal process.
4. The onus of proof in dealing with s191 applications rests with the applicant. The burden of proof is the balance of probability and, to meet this, the evidence adduced by the applicant should be precise and unambiguous.
5. On the above basis the costs claim must presuppose that sufficient evidence had been provided to demonstrate, on the balance of probabilities, that the HMO use had commenced before 17 November 2022; the date that the Article 4 Direction came into force. However, the required precision and unambiguity to this end, has not been satisfied. In illustration, application forms relating to proposed developments at the appeal property, dated 18 October 2022 and 28 November 2022, both state that at these dates the property was in use for class C3 purposes, which contradict the applicant's stated claim on the form for the application now at appeal that the HMO use commenced on 28 September 2022.
6. Moreover, though, for some reason, there were no tenancy agreements submitted to PINS in support of the appeal when it was lodged on-line. Accordingly, there was no independent evidence provided to corroborate the claim for the LDC applied for.

7. Finally, as I mentioned in the main decision letter, the fact that the Council misapplied the legislation in its consideration as to whether or not the HMO use was lawful in planning terms is immaterial insofar as the error has been rectified with my reassessment of the case. Further, despite the ten year bar being irrelevant the evidence submitted to PINS is not sufficiently compelling as to confirm that the use had commenced before 17 November 2022.
8. For the reasons given above, I am not of the view that the appeal could have been avoided. Accordingly, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
9. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR