



Costs Decision

Site visit made on 7 May 2025

by **M Ollerenshaw BSc (Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd June 2025

Costs application in relation to Appeal Ref: APP/J4423/X/24/3342594

4 Crofton Avenue, Sheffield, S6 1WF

- 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 Ms Jessica Gaskell for a full award of costs against Sheffield City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of existing incidental domestic building to the rear of 4 Crofton Avenue as ancillary accommodation to the main dwellinghouse.
-

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 (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 provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include a failure to produce evidence to substantiate refusal reasons and acting contrary to, or not following, well established case law.
4. In summary, the applicant's costs application is made on the basis that the Council did not properly understand the principles of operational development and change of use; and that it set aside relevant established case law and instead applied different tests that were not relevant to the proposal.
5. The Council responds that determining whether a use is incidental is based on a matter of fact and degree, and various appeal decisions which considered this issue were consulted, which is where the test was derived from and included such matters as the use proposed and the site layout. The Council was not satisfied that sufficient detail had been provided to ensure that the proposal would be incidental.
6. The Council's decision notice states that the proposal represents operational development which would not be permitted under Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015. However, Class E relates to the provision of a new building within the domestic curtilage, rather than the use of an existing one.
7. It is unclear why the Council considered the proposal to be operational development given that the appellant sought a lawful development certificate based

on the proposed use of the building, and external works to the building had been considered and approved under a separate application. I find that it was unreasonable of the Council to assess the proposal as operational development when that was not what was applied for.

8. I acknowledge that the Council has set out the reasons it considers the proposal would result in a self-contained dwelling and a material change of use, and there is evidence that it considered relevant case law in reaching its decision. However, the misapplication of Class E to the proposal and the tests relating to incidental use, do not support the reason for refusal in my view. If the Council had assessed the application on the correct basis, it may have come to a different conclusion and the appeal would not have been necessary.
9. Conditions cannot be attached to lawful development certificates, though the applicant suggests that the Council could have considered using its powers under section 192 (3) of the 1990 Act to describe the use or operations in question. This would not have been likely to address the Council's concerns in my view.
10. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

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 Sheffield City Council shall pay to Ms Jessica Gaskell, the full costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs office if not agreed.
12. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Offerenshaw

INSPECTOR