
Costs Decision

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

an Inspector appointed by the Secretary of State

Decision date: 6th August 2025

Costs application in relation to Appeal Ref: APP/U4610/X/24/3358139

46 Winchester Street, Coventry CV1 5NU

- 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 Mr Kushal Mane for a full award of costs against Coventry City Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the use as a house in multiple occupation - Class C4.
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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. Awards against a local planning authority may be either procedural or substantive. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example acting contrary to, or not following, well-established case law.
4. The application was made and responded to in writing and therefore there is no need to rehearse the detailed points made. The thrust of the applicant's case is that the Council's focus throughout has been on whether or not a 5th tenant was in occupation as of 30 September 2023 and this demonstrates a misunderstanding of basic planning law. It is therefore contended that the LDC application should have been approved avoiding the need for the appeal.
5. I acknowledge that the Council's officer report relating to the first LDC application¹ concludes that *'from the information submitted it is, on the balance of probabilities unlikely that the building has been in continuous use as a HMO and for five persons as the last occupier of Room 2 appeared to have vacated/ended their tenancy in January 2023.'* Moreover, the Council has stated in its statement of case that *'as confirmed in Government Guidance on lawful development certificates an application needs to describe precisely what is being applied for (not simply the use class).'* I agree that this is the advice within the PPG in respect of LDCs and it goes onto indicate that without sufficient or precise information, a local planning authority may be justified in refusing a certificate.

¹ Ref: PL/2023/0002077/LDCE

6. In this case, the application form describes the existing use as *'Property has been operating as a HMO since 10th March 2023.'* It also states that the relevant Use Class of the Town and Country Planning (Use Classes) Order 1987 (UCO) is C4 - Houses in multiple occupation (Class C4). In my substantive decision I have stated that it is clear from that application form that a LDC is being sought for use as a house in multiple occupation (HMO) falling within Class C4. Reference is made to the HMO having only 5 tenants in the grounds for the LDC application section of that form.
7. As stated in the substantive decision Class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the UCO, to a use falling within Class C4 (houses in multiple occupation) of that Schedule is permitted development. Class C4 is defined, within the UCO, as use of a dwelling by not more than six residents as a 'house in multiple occupation'. The interpretation of Class C4 within the UCO states that *'for the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.'*
8. The Council has stated that on 30 September 2023 an Article 4 Direction came into force in the Council's area, including the appeal site which removed permitted development rights relating to Class L(b) of the GPDO. For the applicant to succeed in the appeal, it was necessary for him to demonstrate with precise and unambiguous evidence that the use of the property had changed to a Class C4 HMO use prior to that date and continued in that use until the date of the LDC application.
9. The number of residents may be pertinent to the assessment of an LDC application relating to the existing use of a property as a HMO that does not fall within Class C4, in that it has more than 6 residents. Nonetheless, in this case whether the number of residents was 2, 3, 4, 5 or 6 is irrelevant as to whether the use of the property had changed to a Class C4 HMO prior to and continued to the relevant dates. This is because with 2, 3, 4, 5 or 6 residents the use would still fall within Class C4, if that use met the interpretation of Class C4 as defined in the UCO. I acknowledge therefore that the assessment in the officer's report relating to the first LDC application was based on irrelevant factors regarding planning law.
10. Nevertheless, the Council refused the LDC application, that is the subject of the substantive appeal, because it considered that insufficient information had been submitted to establish, on the balance of probability, that the property was occupied within Class C4 before 30 September 2023. The officer report for that LDC application and its Statement of Case considers that the evidence with regards to the assured shorthold tenancy agreements (AST) contained anomalies that had not been addressed. I acknowledge that the officer report also cites that there is insufficient evidence to demonstrate that Room 2 has been occupied. Nevertheless, based on the evidence before me, it appears that the appeal was not entirely due to the Council's consideration of irrelevant factors regarding planning law and the appeal could not have been avoided.
11. This was a case where I was required to examine the submitted factual evidence and apply relevant law or judicial authority to the circumstances which involved

planning judgment. I have disagreed with the Council, yet it appears that additional evidence including bank statements and a Building Control final certificate were before me. I am therefore satisfied that the Council have not acted unreasonably in this respect.

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

D Boffin

INSPECTOR