

Costs Decision

Site visit made on 11 September 2025

by **John Whalley**

an Inspector appointed by the Secretary of State

Decision date: 14th October 2025

Costs application in relation to appeal ref: APP/Z4310/X/25/3358286

57 Lorne Street, Kensington, Liverpool L7 0JP

- 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 Ms Shavae Willoughby o/b Homes2empower for an award of costs against Liverpool City 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 the refusal of Liverpool City Council grant a certificate of lawful use or development, (LDC).

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

Submissions made by Ms Shavae Willoughby o/b Homes2empower

1. The Appellants seek an award of the full costs of making their appeal.
2. Liverpool City Council changed the description of the proposed development from that applied for without seeking authorisation from the Appellants or their agent. The Planning Practice Guidance (PPG) is clear that the Council should agree any changes to the description of development. As a result, the application was considered against a different set of criteria.
3. The Planning Inspectorate's Training Manual states that the description of development in the banner heading should always come from the planning application form. It should generally be a direct quote. Whilst minor corrections could be made, it was not appropriate to 'tidy up' the description or to make any significant changes.
4. The Council failed to properly consider the evidence presented. They took the view that use of a dwelling as a children's home would amount to a material change of use irrespective of the number of children homed, the shift pattern of carers and how the home operated. That was an unreasonable approach which flew in the face of best practice and multiple appeal decisions.
5. The Council's failure to properly consider the application caused unnecessary delay to occupation of the premises, plus a loss of income and extra expense with the appeal and a further application fee for a resubmission.

Submissions made by Liverpool City Council

6. The Council accepts it would have been prudent to notify the appellant of the requirement to update the description of development but submit that making the amendment was not unreasonable. Under s192 of the Town and Country Planning Act 1990 (the 1990 Act), applications of this nature must be based on a true, accurate and precise reflection of the development proposed.

7. The Council's change to the description of the development was based on the supporting evidence submitted by the Appellants. The Council would have reached the same conclusion and made the same decision on the application even if the description had been left unchanged from the original.

Inspector's conclusions

8. 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 necessarily follow the result of the appeal.
9. Where an LDC is sought under s191 of the 1990 Act for an existing use or development, s191(4) enables the local planning authority (LPA) to modify the description so that they can issue an LDC for any existing use or development found on the evidence to be lawful, even if that was misdescribed in the application. However, s192 does not make an equivalent provision meaning that, where an LDC is sought for a proposed use or development, it is for the appellant to "propose" what should be subject to assessment for lawfulness.
10. The LPA (or an Inspector) can modify the description of a proposed use or development subject to a s192 application (or appeal) but only with the appellant's agreement. In this case, the Council did not seek the appellant's agreement before changing the description and I find that was unreasonable behaviour. That the description did not even need to be changed, as set out in my appeal decision, adds weight to that finding.
11. However, the Council did not modify the description of what the use would be in substance or character, they rather added detail about how the use would operate from the appellant's own evidence. Accordingly, the Council did not misdirect themselves in terms of what they assessed the lawfulness of.
12. I also consider that Council properly scrutinised the evidence before them. They referred to the appellant's information about the proposed use and to other appeal decisions in support of their case. While I found in favour of the appellant on the question of lawfulness, the Council did not behave unreasonably in their determination of the LDC application before them.
13. Thus, the Council behaved unreasonably in unnecessarily changing the description of the proposed use without gaining the appellant's agreement, but that did not affect their determination of the application, and they made that determination with proper regard to the evidence before them. It follows that the appellant would always have needed to make an appeal and did not incur any unnecessary or wasted expense in doing so.
14. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs against Liverpool City Council is not justified.

John Whalley

INSPECTOR