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## Costs Decision

Site visit made on 15 October 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> October 2025

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### **Costs application in relation to Appeal Ref: APP/L3815/X/24/3352885**

#### **53 Adelaide Road, Chichester, West Sussex PO19 7NF**

- The application is made under the Town and Country Planning Act 1990 (as amended) (the Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Simon Birmingham of Simon Property Investments for a full award of costs against Chichester District Council.
  - The appeal was against the refusal of a certificate of lawful use or development (LDC) for development described as 'Change of use from Class C3 dwelling house to Class C4 house in multiple occupation, to include dormer to rear roof slope'.
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### **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 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. It is claimed by the applicant that it was unreasonable for the Council to have refused to issue a LDC because it failed to substantiate its reasons and has not determined similar cases in a fair and consistent manner, while the refusal delayed development and the Council could have issued a split decision.
4. The Council disputes these claims, suggesting that it has not previously issued split decisions for such applications, that its submissions support its decision, and that the claimed 'similar cases' referred to by the applicant relate to 'householder applications' which did not incorporate proposed changes of use to Houses in Multiple Occupation (HMOs).
5. I have found that the first reason for refusal stated in the Council's decision notice is without merit. It was unreasonable for the Council to refuse to issue an LDC under section 192 of the Act, when the applicant had sought confirmation that specific proposed development would have been lawful on the date of the application. The applicant was not seeking confirmation that any development existing on the date of the application was lawful. Moreover, the applicant disputes that any such development had been carried out at the time of the application and the Council's photographs dated 6 August 2024 do not show any development had been carried out on or before the date of the application.
6. As set out in my appeal decision, the onus is on the applicant to submit sufficiently precise and unambiguous evidence to show, on the balance of probabilities, that

the works and change of use claimed to be lawful would have been lawful if instituted or began on the date of the application. The applicant failed to do this in respect of the volume by which the proposed dormer would increase the original roof space. The Council has not substantiated its calculations either, but it was not unreasonable for the Council to dispute the applicant's claims, where there was an absence of sufficiently precise and unambiguous evidence all-round. There is no evidence that the Council was requested to issue a split decision, and it was not compelled to do so.

7. It may well be the case that the Council has not previously asked applicants to demonstrate proposed dormer extensions and/or changes of use to HMOs comply with Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). However, the applicant's claims in this regard have not been substantiated. In any case, I have not been provided with reliable evidence to show, as a matter of fact and degree, that either the proposed dormer or the change of use could have been instituted or begun on the date of the application in compliance with those regulations, which are referred to by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Again, it was the applicant's responsibility to provide the necessary evidence to support their case from the outset.
8. I therefore find that it was not unreasonable for the Council to refuse to issue a LDC or to rely on the appeal submissions it made to substantiate its decision, other than in respect of the first reason for refusal. It was unreasonable for the Council to state that the proposed development which was claimed to be lawful on the date of the application did not fall within the parameters of what could be confirmed as lawful under section 192 of the Act on the basis that works for the development had been carried out before the Council issued its decision. This unreasonable behaviour resulted in the applicant incurring unnecessary costs in the appeal process by having to address the Council's first reason for refusal, but not through any delays in completing development. It remained necessary for the applicant to address the second reason for refusal and the Habitats Regulations at appeal.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of addressing the first reason for refusal only and a partial award of costs is therefore warranted.

### **Costs Order**

10. 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 Chichester District Council shall pay to Mr Simon Birmingham of Simon Property Investments the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the first reason for refusal only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. 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.

*L Douglas*                      INSPECTOR