



Costs Decision

Site visit made on 28 October 2025

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

an Inspector appointed by the Secretary of State

Decision date: 26th November 2025

Costs application in relation to Appeal Ref: APP/Z2315/X/25/3362483

14 Wyntham Street, Burnley, Lancashire, BB10 1UQ

- 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 Mathew Levy, Levy Family Partnership for a partial award of costs against Burnley Borough Council.
 - The appeal was against the refusal of a certificate of lawful use of development for “change of use from C3 terrace dwelling to C4 house of multi-occupation HMO”.
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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 (the 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. The Guidance indicates that local planning authorities will be at risk of an award being made against them if, for example, they make vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis; or fail to produce evidence to substantiate reasons for refusal.
4. The applicant considers refusal reason 1 to be unreasonable. This states that the House in Multiple Occupation (HMO) cannot be lawful as the property appears to allow accommodation for more than 6 individuals. The gist of the applicant’s costs claim is that the application sought a lawful development certificate for a change of use from use class C3 (single dwelling) to C4 (small HMO for up to 6 people), and that any occupancy beyond 6 residents would constitute a breach of planning control which the Council could enforce against. An HMO with more than 6 occupants would be a sui generis use which would require planning permission. Had the applicant been applying for more than 6 occupants they would not have submitted a lawful development certificate as that would not have been the appropriate route. The development should therefore have been assessed as a C4 small HMO, as applied for, and not on the basis of a hypothetical, alternative use.
5. In response the Council argues that its refusal was reasonable because the application lacked precise information on occupancy and included plans showing double bedrooms, suggesting more than 6 occupants, which would not fall within use class C4. The Council maintains that no unreasonable behaviour occurred, and no additional costs were caused.

6. Although it is clear from the application form and planning statement that the applicant was applying for a class C4 small HMO, there was no clear evidence, such as tenancy agreements, to confirm the exact number of occupants. The plans show double bedrooms, which could be considered to indicate double occupancy. However, this appears to have been for illustrative purposes to demonstrate how the layout of the property could work, rather than an indication that some or all of the rooms would be occupied by two individuals.
7. For lawful development certificate applications, the burden of proof is firmly upon the applicant, and their evidence should be sufficiently precise and unambiguous. Whilst the Council's assessment and decision were made in part on an incorrect basis, this was perhaps understandable given the lack of clarity around the number of occupants and the confusion arising from the plans. In any event it is unlikely that the appeal could have been avoided altogether given the Council's other grounds of refusal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Conclusion

9. For these reasons, and having considered all matters raised, I conclude that a partial award of costs is not justified in this case. Accordingly, the application for an award of costs should be refused.

M Ollerenshaw

INSPECTOR