
Costs Decision

Site visit made on 27 April 2026

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 APRIL 2026

Costs application in relation to Appeal Ref: APP/M4510/X/25/3367491

136 Wingrove Road, Newcastle Upon Tyne, NE4 9BX

- 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 Miss Viktoria De Giorgi for a full award of costs against Newcastle Upon Tyne City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for change of use from class C3 (dwellinghouse) to class C2 (residential institutions).
-

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. An award of costs can be made for either procedural or substantive reasons.
3. The basis for appellant's application for an award of costs against the Council is that it failed to consider whether the proposed change constituted a material change of use given section 55(1) of the Act. The Council did not prepare a statement of case as part of the appeal and instead relied on its officer report.
4. I have reviewed the officer report and the Council's refusal notice. The reasoning in the officer report is brief and states *'there are not any permitted development rights to go from use class C2 from use class C3. Planning permission is, therefore, required'*. This reasoning was copied verbatim into the Council's refusal notice. There is no evidence that the Council considered whether the proposal would amount to a 'material' change of use of the land/property given section 55(1) of the Act. This was despite the appellant providing information about the proposed use and drawing the Council's attention to LDC appeal decisions which correctly outlined how such proposals should be considered.
5. The evidence is that the Council did not determine the LDC application correctly in so far that it did not properly consider section 55(1) of the Act. It is not the case that simply because the proposal was for a different use class, or that permitted development rights did not exist to move from a C3 use to a C2 use, it meant that such a proposal amounted to a material change of use and hence development for which planning permission was required. It was necessary for the Council to assess the LDC application based on whether, on the date of the LDC application, the proposal, if instigated or begun, would have resulted in some significant or material

difference in the character of activities from what had gone on previously, as a matter of fact and degree. The Council did not suitably undertake this assessment as part of the LDC application or as part of the appeal. Hence, I find that the Council has failed to substantiate its decision to refuse the LDC application.

6. In its response to the appellant's costs application, the Council appear to imply that because a planning application was subsequently submitted and approved for the same proposal, it means that the subject appeal proposal must constitute a material change of use of the property/land. I do not find that is a reasonable position to take. The planning application was submitted following the refusal of the LDC application. I find that it is likely that the appellant simply wanted to make use of all available options in terms of securing some sort of permission for the proposal (i.e., planning permission or an LDC following the lodging of an appeal) and in the hope that one way or another she would be able to lawfully use the property for use class C2 purposes. It is not uncommon for landowners to sometimes submit planning applications for schemes even if it might be the case that one may take the view that such a proposal is not an act of development or is permitted development.
7. In addition to the above, and, in response to the appellant's costs application, the Council states '*the appellant has not provided any specific insight in to why this proposal is not a material change and indeed has stated that it is a class C2 use*'. This claim is not well founded. The appellant has provided evidence which outlines why she considers that the proposal does not amount to a material change of use of the property/land. Moreover, the Council appears to have compounded its unreasonable behaviour by referring again to the fact that what is proposed is a C2 use. That is indeed the case, but again the Council has failed to apply section 55(1) of the Act. As per the reasoning in my LDC appeal decision, it is not the case that a proposed change from use class C3 to use class C2 automatically means that such a change amounts to a 'material' change of use.

Conclusion

8. For the reasons given above, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

9. 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 Newcastle Upon Tyne City Council shall pay to Miss Viktoria De Giorgi, the 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.
10. The applicant is now invited to submit to Newcastle Upon Tyne City 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.

D Hartley

INSPECTOR