



Costs Decision

Site visit made on 26 August 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date 02 September 2026

Costs application in relation to Appeal Ref: APP/B0230/X/25/3373698

33 Dale Road, Luton, LU1 1LJ

- 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 Genaron Invest for a partial award of costs against Luton Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a change from a dwellinghouse (Class C3) to a residential institution for two children in care (Class C2).
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Decision

1. The application for an award of costs is refused.

The Application and the Council's Response

2. The respective cases were submitted in writing such that the parties will be familiar with the content. As such, the following is a brief summary of the main points.
3. The application is made on 3 main grounds. Firstly, that the Council applied an incorrect evidential basis, requiring certainty, as opposed to considering the balance of probability. Secondly, the Council placed undue weight on speculation regarding the presence of kitchenette facilities within bedrooms, conjecturing that the use was in Class C4 which was not supported by evidence and unreasonable. Thirdly, the Council failed to properly engage with established caselaw and numerous appeal decisions which have held that a change from a dwellinghouse to a small children's care home does not normally amount to a material change of use (MCU).
4. A award of costs is therefore requested based on the need to rebut the Council's evidence and requests for information in respect of those three issues.
5. The Council recognises that the evidential burden is the balance of probability but also that the onus rests with the appellant to make their case. In this case, there was ambiguity as to what the existing use of the building was which made it difficult to evaluate the LDC application. The application was refused on the basis of that ambiguity, not due to applying the wrong evidential test.
6. For the same reasons, the Council did not fail to apply relevant caselaw but could properly assess the proposal against such caselaw or other appeal decisions in the face of ambiguity in relation to the existing use.

Reasons

7. 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.
8. I can address the matter relating to costs relatively briefly, particularly by referring to my associated decision in respect of the appeal. For the reasons set out in that decision, the ambiguity in the appellant's case with respect to the existing use of the property was fatal to any hope of a certificate being granted.
9. The planning statement indicated that the property was a three-bed dwelling falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). However, a plan submitted brought that into question and the Council had every reason to doubt whether the existing use was as suggested. Somewhat unusually, it is not clear if either party had actually been inside the building when the respective cases were being made.
10. I say that because on inspection at my site visit it was readily obvious that the property was laid out as a HMO as opposed to a family dwellinghouse. Given that the appellant's starting position was incorrect in terms of use, the whole premise of their case unravelled. It is imperative that an accurate picture of the existing use is available because only then can one compare whether the proposed use would be materially different.
11. In this case, the ambiguity was obvious and there was no information as to the existing number of residents, their relationships with each other or other information to give a clear picture of the existing use. Having read the delegated report, the officer was clearly mindful of relevant caselaw and there is nothing to indicate that they applied an incorrect evidential burden. Rather, the report very clearly set out the ambiguities in the applicant's case, ambiguities that proved to be fatal to the subsequent appeal.
12. Consequently, there was no unreasonable behaviour on the part of the Council and there are no grounds for an award of costs. It follows that I shall refuse the application.

Chris Preston

INSPECTOR