The Planning Inspectorate

Costs Decision

Site visit made on 21 March 2017

by R W Allen B.Sc PGDip MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 March 2017

Costs application in relation to Appeal Ref: APP/G2625/W/16/3161517
3 Woolgate Court, St Benedicts Street, Norwich, NR2 4AP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Trivedi (Trivedi House Ltd) for a full award of costs against Norwich City Council.
- The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 for a change of use of a building for B1 (office) to Class C3 (dwelling house) to provide 2no 1 bedroom and 2no studio flats.

Decision

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

The submissions by Mr Trivedi (Trivedi House Ltd) and response by Norwich City Council

2. The appellant's application for costs, and the Council response, has already been made in writing. In summary, the appellant says the Council made incorrect assumptions about the lawful use of the building, and their position directly contradicts the planning history of the site, such that it acted unreasonably, led to wasted expenditure pursuing the appeal, and a full award of costs should be made. The Council states that it made a reasonable judgement on the evidence from its business rates section, that it was entitled to reach such an opinion, and that it has not acted unreasonably and no award of costs should be made.

Reasons

3. Paragraph 030 of the Planning Practice Guidance (the Guidance) (*Ref ID: 16-030-20140306*) advises that costs may only 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. Paragraph 049 of the Guidance (*Ref ID: 16-049-20140306*) states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal by, amongst other things, failure to produce evidence to substantiate each reason for refusal on appeal.

4. As I set out in my decision, the appeal turned on whether the building, that is the ground, first and second floors, constituted a single planning unit or two planning units. I found from both my observations at my site visit and from the evidence before me including the original and change of use planning permissions from 1990 and 2002 respectively, that the ground floor is a

separate planning unit with a separate address as No 57 St Benedicts Street, now in A2 use, and that the upper floors has its own address and entrance as No 3 Woolgate Court and is in B1(a) office use.

5. The Council relied heavily on the business rates evidence to support its case. However, as I set out in my decision, I did not find that sufficient evidence was before me as to whether or not this record includes the ground floor unit, or whether a separate record under No 57 St Benedicts Street address exists. Furthermore, I did not find that the Council has satisfactorily explained how in its view and in light of that evidence, it reached the conclusion that the building as a whole had changed to an A2 use, either from the implementation of the 2002 planning permission which I evidently found in my decision only applied to the ground floor, or from the occupation of the whole building by the business in 2007.

6. Having said that, it does not necessarily follow that the Council must have acted unreasonably simply because it interpreted the available evidence differently to me. Indeed the appellant's use of the same address, No 3 Woolgate Close for Appeal B (*Ref: APP/G2625/W/16/3161534*), which clearly relates to the ground floor only, could conceivably have been considered persuasive by the Council and supportive of its case. Notwithstanding my findings in my decision, I can appreciate why the Council might have drawn a different conclusion, and it was within its right to do so. I am not therefore persuaded that it has been adequately demonstrated that the Council acted unreasonably.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

R Allen

INSPECTOR