

Costs Decision

Site visits made on 10 and 28 February 2017

by Jean Russell MA MRTPI

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

Decision date: 13 April 2017

Costs application in relation to Appeal Ref: APP/E2734/C/16/3160107
The land situate and known as Coach House, 5-7 Back Granville Road,
Harrogate, North Yorkshire, HG1 1BY

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Kevin O'Boyle o/b Town Taxis Harrogate Ltd for a full award of costs against Harrogate Borough Council.
 - The appeal was against an enforcement notice alleging a material change of use of the land to a use as a taxi office.
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Decision

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

Procedural Matters

2. The application for an award of costs was made in writing. The Council did not respond to the application.

Reasons

3. 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 process¹. The appellant seeks an award of costs on the basis that the enforcement action was unnecessary and unjustified, in conflict with the *National Planning Policy Framework*.
4. Under s172(1) of the 1990 Act as amended, a local planning authority (LPA) may issue an enforcement notice where it 'appears to them' that there has been a breach of planning control and it is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations. However, the PPG advises that failure to carry out adequate prior investigation may be unreasonable behaviour that can lead to an award of costs².
5. The appellant objects that the Council threatened to issue the notice before the unauthorised use commenced, and then did so without evidence of harm. It is undisputed that the use began on 10 August 2016, and the LPA had prior notice. The appellant advertised that he was moving his office to the site, and this alarmed the taxi licensing enforcement officer. The LPA also received objections about the 'potential' move before 10 August from Environmental Health and local residents.
6. The Council argues that, if a material change of use is liable to be permanent and is unauthorised, it is reasonable to issue an enforcement notice from the time of the first occurrence of the use. It follows that it would have been unreasonable for

¹ PPG paragraph ref ID: 16-028-20140306

² PPG paragraph ref ID: 16-048-20140306

the Council to issue the enforcement notice before the use commenced, however foresighted any representations that might have already been received³.

7. The Council suggests that it had prior evidence of the nature of the appeal use because the appellant had recently lost an appeal for a taxi office elsewhere⁴. However, that appeal was made against a refusal to grant planning permission – not an enforcement notice – and so the Inspector would not have determined whether the way that the taxi office would operate from the other site would amount to a B1 use. The appellant could not have been expected to make representations on that matter. I am also unpersuaded that the Council could ‘extrapolate the same conclusion’ on the planning merits of the use from the first appeal decision and apply that to this site before the use commenced.
8. As it was, however, the Council did not authorise service of the notice until 16 August 2016 – and it did not actually issue the notice until 16 September. Between 10 August and 16 September, the Council received further emails from local residents describing the operations and impacts of the use at Back Granville Road⁵. By the date of the notice, therefore, it had clearly ‘appeared’ to the Council that there had been a breach of planning control resulting in planning harm.
9. The appellant objects that the Council relied on the *Town and Country Planning (Use Classes) Order 1987* in determining that the appeal taxi office was not in B1 use. I considered the character of the appeal use, however, and still found against the appellant on ground (c). If the Council had made a similar ‘fact and degree’ assessment of the development, it is still likely that a notice would have been issued and the appellant would have needed to appeal. That he believed he was complying with a B1 lease, and removed signage does not alter that finding.
10. The Council did not consult the Highways Authority (HA) until after the notice was issued and this could be described as unreasonable behaviour, given that impact of on highway safety was a reason for taking enforcement action. That finding is of little consequence, however, because the HA objected to the development and supported the notice. The Council substantiated its reasons for taking enforcement action and the appellant did not incur unnecessary expense in making this appeal.
11. The PPG advises that lack of co-operation may be unreasonable behaviour⁶. The appellant objects that the Council refused requests to discuss the case, although he had offered to make a unilateral undertaking to restrict the use of the premises. However, the Council did write to the appellant’s agent on 13 September 2016, albeit in response to a freedom of information request. In another email dated 7 October 2016, the Council noted the offer of an undertaking but stated that ‘*a use of this type from this location could [not] be operated in a manner that would not result in development that is contrary to local and national planning policy*’.
12. Whether or not there should be been more engagement, I find that it would have been to little end; the parties were too far apart on the character and planning merits of the appeal use. The appellant would still have been served with a notice and required to make an appeal. Adding weight to that assessment, I agree with the Council that the offer to make a unilateral undertaking was not detailed. Indeed, no undertaking was produced during the course of the appeal.
13. It was not unreasonable for the Council to disregard activities undertaken by another taxi firm in the town centre. The Council has shown that the other

³ *Tidswell v SSE & Thurrock BC* [1977] JPL 104

⁴ Appeal ref: APP/E2734/W/16/3153761, decision dated 10 November 2016

⁵ I have discounted complaints that related to an incident with a flat tyre.

⁶ PPG paragraph ref ID: 16-047-20140306

business operates from a site with a different planning history. Moreover, the appellant did not show why or how that other taxi office would proscribe action against or justify a grant of permission for the appeal use.

14. The Council's enforcement report did not weigh the benefits of the appellant's business on the local economy, which the Core Strategy supports. However, the report was clear that enforcement action was required as a result of harm caused by the use. The Council took account of economic and social matters in its statement of case, and still argued that the appeal should be dismissed. I found that the benefits of the use would not outweigh or justify harm caused.
15. For these reasons and with regard to all other matters raised, I conclude that unreasonable behaviour resulting in wasted or unnecessary expense, as described in the PPG, has not been demonstrated. The costs application should be refused.

Jean Russell

INSPECTOR