Costs Decision

Site visits made on 1 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Costs application in relation to Appeal Ref: APP/B4215/C/21/3285772
14 Lees Hall Crescent, Manchester, M14 6YA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Manchester City Council for a full award of costs against Mr James Henry.
- The appeal was against an enforcement notice alleging the material change of use of a dwellinghouse (Use Class C3) to a house in multiple occupation (Use Class C4).

Decision

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

Procedural Matters

2. The Council advise that it considers the appellant for the appeal should be Mr James Henry on the basis of ownership and as reflected in the list of persons served that accompany the enforcement notice. The appellant has identified their details on the appeal form as Mr James Henry, with the company name 'Studentshack Limited'. The appellant has confirmed in writing that the owner of the property is James Henry and I shall deal with the application for costs on this basis.

3. The Council has submitted a costs application in relation to a number of appeals submitted by Mr James Henry and Student Shack Limited, including APP/B4215/C/21/3285773 and APP/B4215/C/21/3285775, APP/B4215/C/21/3285776. These are the subject of separate decisions.

Reasons

4. 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. Awards against an appellant may be either procedural or substantive.

5. The PPG sets out that the right of appeal should be exercised in a reasonable manner and advises that an appellant is at risk of a substantive award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding. The word "unreasonable" is used in its ordinary meaning as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

6. The Council assert that the appellant has proceeded with the appeal on a wilful misreading of the relevant legislation and case law. In particular, in applying the principles set out in *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226; [2002] JPL 1278 CoA to the appeal property.

7. While the short term letting would not have been a C4 use, it does not follow that the short term letting use would necessarily be materially different to the C4 use. Whether there was a material change of use is a matter of fact and degree.

8. As set out in the appeal decision, it seems likely that the appellant has confused the principles set out in *Thurrock*, with the principles set out in *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461. Nevertheless, had I found that the short term letting use had not constituted a material change of use, the appellant's case would have succeeded.

9. I do not believe the appellant's comment that 'The only material difference is that the property during this period was unlikely to have been the occupiers' sole or main residence' was an acceptance on their part that a material change of use had occurred, rather the appellant seems to be accepting that the use is not a C4 use. The appellant could have taken more care with their choice of wording, however, I do not believe this constitutes unreasonable behaviour.

10. Whilst I have agreed with the Council, that a material change of use has occurred, I do not therefore believe the appellant was unreasonable in pursuing the appeal on this basis.

11. The Council suggest that the appellant has deliberately chosen to withhold information at an investigation stage so that he could then mount an appeal argument that has no merit.

12. The Council issued a planning contravention notice on 18 September 2020, which the appellant responded to on 8 October 2020. Following this, there was some dialogue between the Council and the appellant's agent regarding the short term letting use. The appellant's agent advised it was unclear on what basis the Council had determined that the alleged change was a C3 dwellinghouse and queried why the alleged intervening use has not been to a C1 hotel use or a *sui generis* use.

13. The Council officer responded to the agent's email, setting out why the Council considers the intervening use fell within Class C3. The appellant suggests that it was clear that there was a fundamental disagreement with the Council as to whether the short term letting period resulted in a change of use from a HMO to a C3 dwellinghouse.

14. However, the Council invited the appellant to provide evidence to suggest that the nature of the short term letting meant that the intervening use of the properties was within Class C1 or *sui generis*. The email sent by the officer is dated 10 December 2020. The enforcement notice was not issued until 21 September 2021.

15. The officer's email was clear, the Council intended to issue an enforcement notice. The appellant had more than sufficient time to respond to the Council on this matter. Had the appellant done so, the Council may have chosen either to refer to the *sui generis* short term letting use or to omit reference to residential C3 use in the allegation, removing the need for the notice to be corrected. The fact that the Council proceeded to take enforcement action on this basis should have come as no surprise to the appellant.

16. While the appellant has a right of appeal under ground (b), had they responded to the Council, this is likely to have been unnecessary. Nevertheless, I consider

the appellant would still have sought to exercise their right of appeal under ground (c) and the appeal would still have been necessary. Consequently, the Council has not incurred wasted expense.

Conclusion

17. I therefore conclude that unreasonable behaviour by Mr James Henry, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Savage

INSPECTOR