



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/21/3285776 48 Ladybarn Crescent, Manchester M14 6UU

- 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 large house in multiple occupation (Sui Generis).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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/21/3285772 and APP/B4215/C/21/3285773, APP/B4215/C/21/3285775. 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 that an appellant is at risk of an 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. Although the appellant appealed under ground (c), as will be seen from the appeal decision, part of their case is that the breach that has occurred is a change of use from a small C4 HMO to a large sui generis HMO. I have

considered this under ground (b), which is that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact.

7. 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.
8. 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.
9. 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.
10. 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.
11. The fact that the Council proceeded to take enforcement action on this basis should have come as no surprise to the appellant. While the appellant has a right of appeal under ground (b), had they responded to the Council, this is likely to have been unnecessary.
12. The appellant accepts that the change to a large *sui generis* HMO has taken place and this is unauthorised. The appellant is professionally represented and the appellant's agent should have understood that the appeal under ground (c) had no reasonable prospect of success.
13. Pursuing the appeal under ground (c) is unreasonable behaviour and has caused the Council to incur wasted expense in dealing with this ground of appeal.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

15. 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 Mr James Henry shall pay to Manchester City Council, 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.

16. The applicant is now invited to submit to Mr James Henry, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Savage

INSPECTOR