



Costs Decision

Site visit made on 18 February 2025

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Costs application in relation to Appeal Ref: APP/C2741/C/23/3330321 Land at 72 Huntington Road, York YO31 8RN

- 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 Richard Harrison for a full award of costs against City of York Council.
 - The appeal was against an enforcement notice alleging Without planning permission, the material change in the use of the Land from dwellinghouse within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to short-term let accommodation (sui generis use).
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The basis of the appellant's Costs claim is firstly that the Council failed to address the question of whether a material change of use had actually occurred. Secondly they say the Council did not have sufficient noise or traffic related evidence that the use being enforced against was causing harm, particularly in the context of the 'house rules' in place. There was no evidence to indicate the early or late arrival of guests caused disturbance, and no request was made for the appellant's noise recordings to be provided. Consequently, the appellant says there was no basis on which to conclude it was expedient to issue the notice.
4. S172(1) of the 1990 Act states that an enforcement notice may be issued where it appears to the Council 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.
5. With regard to the question of expediency, it has been held in case law² that any challenge as to whether it was 'expedient' for the Council to issue the notice must be pursued by way of judicial review. Inspectors have no jurisdiction to determine whether the Council complied with s172.

¹ Reference ID: 16-030-20140306.

² *Britannia Assets v SSCLG & Medway Council* [2011] EWHC 1908(Admin).

6. Notwithstanding this, the Council set out within its reasons for issuing the notice that the property was advertised for short term holiday letting for up to eight persons, and was registered for business rates under 'Self catering holiday unit and premises'. It proceeded to set out the harms, with regard to which it was concerned, caused by the change of use, in terms of comings and goings and guest behaviour.
7. The Council only needed to suspect a breach of planning control. It seems to me that it had evidence on which to base a conclusion that a material change of use had occurred. It also set out in its evidence, that a material difference between the proposed use and permanent residential occupation was not only governed by the number of occupants and that a reduction in the number of visitors to six persons would not mitigate the harm to amenity.
8. Also, irrespective of significance, it appears there were complaints on record of noise related disturbance having been caused at the property. Notwithstanding this, and aside from the availability of any technical evidence, the Council is entitled to, indeed would reasonably be expected to, exercise its professional planning judgment as to the impact of a proposed land use on residential amenity.
9. It would have been possible to reach a reasonable judgment that the development resulted in harm, based on the number and transient nature of visitors and the overall parking impact, notwithstanding the existence of house rules and the potential alternative scenario of a 'bad neighbour' being in occupation. This position is supported by the objections against the deemed planning application, received from local residents.

Conclusion

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

R Merrett

INSPECTOR