



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 Refs: APP/C2741/C/23/3322133 and APP/C2741/C/23/3322684

Land at 70 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 and Mrs Richard and Isabel Harrison for a full award of costs against City of York Council.
 - The appeals were 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 appellants' 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. No request was made for the appellant's noise recordings to be provided, so that this information could be correlated with complaints; and the complaints made prior to the issue of the notice were not specific to No 70. The Council imply that all single sex visitor groups are noisy and disruptive, yet no complaints were received in the 12-month period preceding 24 February 2023. 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.

¹ Reference ID: 16-030-20140306

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.
6. Notwithstanding this, the Council set out within its reasons for issuing the notice that the property was advertised as accommodation for large groups of up to 16 occupiers. 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, the transient nature of guests and intensification of parking demand.
7. The Council only needed to suspect a breach of planning control. It seems to me that it had enough evidence on which to base a conclusion that a material change of use had occurred.
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. It would also have been possible to take a reasonable view that the number of complaints received is not necessarily indicative of the degree of harm to amenity caused, and noise records are not necessarily determinative as to whether amenity is being harmed. 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

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