



Neutral Citation Number [2025] CIGC (Civ) 36

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

Grand Court Cause No. G 2025-0266

IN THE MATTER OF AN APPLICATION FOR LEAVE TO SEEK JUDICIAL REVIEW

BETWEEN

THE KING (ON THE APPLICATION OF DR GAIL ZAPPACOSTA)

Applicant

-and-

CENTRAL PLANNING AUTHORITY

Respondent

EX PARTE ON THE PAPERS

Before: Hon. Justice Marlene Carter

Parties: Nelsons for the Applicant

Leave sought: 07 November 2025

Date of Decision: 28 November 2025

Civil Division – GCR Order 53 r. 3 – Application for Leave for Judicial Review – Sections 13 (3) and 18 of the Development and Planning Act - Enforcement Notice– Appeal to Central Planning Authority – unfairness of decision on appeal – lack of reasons for decision

RULING

1. On 18 February 2025, the Director of Planning issued an enforcement notice (“**the Enforcement Notice**”) in respect of the Applicant’s property at Savannah, Grand Cayman (“**the property**”).

2. The Enforcement Notice alleged that the Applicant had used the property for commercial purposes in respect of a wedding hosted by the Applicant at the property on 15 February 2025 (“the wedding”).
3. The Enforcement Notice required the Applicant to either obtain retrospective planning permission or was also accompanied by a stop notice that the Applicant cease all “commercial use” of the property.
4. The Applicant states that “*The Enforcement Notice failed to identify what “commercial use” was alleged to have occurred, failed to provide any reasons as to why this was thought to constitute a material change of use and failed to provide any reasons as to why the Director considered it expedient to issue an enforcement notice.*”
5. On 09 March 2025 the Applicant appealed against the Enforcement Notice, pursuant section 19 of the *Development and Planning Act* stating:

“I am contesting this enforcement order CE25-0027, it is unjust. My activities with guests on the 15th ... 15th February, does not fit the label of a commercial endeavor. I do not understand the origin of the complaint or how I could possibly be accused of holding a commercial endeavor. I am contesting this enforcement order it is unjust.

I would appreciate a meeting with you, to consider the merits of the facts and the reasons why the accusation of a commercial use is unjust.”
6. On 12 March 2025, the Applicant provided the Director of Planning with a letter from the parties to the wedding surrounding the circumstances of their use of the property. The letter, addressed to the Applicant, noted that there was no formal contract for use of the property for the wedding and that the Applicant had refused to accept any form of compensation.
7. On 22 March 2025, the Applicant sought clarification of the allegations in the Enforcement Notice specifically regarding the source of the complaint and the alleged impact of her use of the property for commercial purposes. In response, the Planning Department referred her to the contents of the Enforcement Notice and the relevant sections of the Planning Regulations/Law.
8. On 24 March 2025, the Applicant also sought clarification as to what information she was required to present at the appeal hearing. She was informed by the Deputy Director of Planning that “*...the purpose of the appeal hearing is to provide you an opportunity to provide your case to the Central*

Planning Authority that the terms of the notice are incorrect, and that the property is not being used for commercial purposes.” The Applicant contends that this was an insufficient explanation.

9. On 30 June 2025 the Applicant wrote a letter to the Deputy Director of Planning outlining the circumstances of the gathering at the property on 15 February. The Applicant contends that it appears that neither this letter nor that forwarded on 12 March 2025 was before the Respondent at the hearing of the appeal. The Applicant states that she was not provided with any evidence or further details of the alleged breach of planning control in advance of the hearing or at the hearing of the appeal.
10. On 21 July 2025 the Respondent gave its decision (“the Decision”) and thereby dismissed the Applicant’s appeal of the Enforcement Notice. The decision was in the following terms:

“At a meeting of the Central Planning Authority held on June 25, 2025 your application was considered and it was resolved to dismiss the appeal as the appellants did not provide sufficient evidence that this was not a commercial use. In addition, the Authority determined that the use causes negative impacts upon the surrounding neighborhood”.

11. The Applicant contends that the Respondent directed itself as to the meaning of “commercial use”, that “commercial also applies to events without money changing hands”. The Applicant submits that there was no explanation for why the Respondent took this view which implies that commercial use can also encompass non-commercial use.
12. The Applicant now seeks leave to apply for judicial review of the Decision. The grounds of the application for leave for judicial review are as follows:
 - (1) *Ground 1 – the decision-making process was unfair because the Applicant was not told of the case she had to meet.*
 - (2) *Ground 2 – the decision-making process was unfair because the Planning Department failed to provide the CPA with the Applicant’s written representations.*
 - (3) *Ground 3 – the decision-making process was unfair because of the CPA’s lack of separation from the body which made the decision under appeal and because of an appearance that its decision to refuse the appeal was pre-determined.*
 - (4) *Ground 4 – the CPA misdirected itself that commercial use covers a wedding for family friends for which no payment was made.*

- (5) *Ground 5 – the CPA failed to consider whether the Enforcement Notice would criminalise lawful activities.*
- (6) *Ground 6 – the CPA failed to provide adequate reasons and/or its decision was “process irrational”.*

13. Section 19 of the *Development and Planning Act* states:

“19(1) A person having an interest in the land to which an enforcement notice relates may, within fourteen days of service of the notice, appeal to the Authority against the notice, whether or not a copy of it has been served on that person.

- (2) *An Appeal may be brought on the grounds that-*
 - (a) *the matters alleged in the enforcement notice do not constitute a breach of planning control;*
 - (b) *the breach of planning control alleged in the enforcement notice has not taken place;*
 - (c) *the appellant being a prospective purchaser of the land to which the enforcement notice relates, had served notice on the Director in accordance with section 18(2) and that the Director has failed to notify the appellant that the development to which the enforcement notices relates had been carried out without permission;*
 - (d) *the breach of planning control alleged by the enforcement notice occurred on a date earlier than five years before the date on which the notice was served;*
 - (e) *the steps required by the enforcement notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 18(3); or*
 - (f) *the period specified in the enforcement notice as the period within which any step is to be taken falls short of what should reasonably be allowed.*
- (3) *On any appeal under this section, the Authority –*
 - (a) *if satisfied that grounds (a), (b), (c), or (d) of subsection (2) have been proven, shall quash the enforcement notice;*
 - (b) *if satisfied that a variation of the enforcement notice on grounds (e) or (f) or both subsection (2) would be appropriate, may vary the notice accordingly,*
 - (c) *in any other case, shall dismiss the appeal.”* The Applicant notes that while Section 19 does not provide statutory procedural rights in respect of such Appeals, the Respondent has published informal rules of procedure. The CPA has published informal rules of procedure. Those informal rules do not provide for an applicant to be provided with particulars or evidence of the case against them and sets a limit of 10 minutes for submissions. The informal rules state: *“Written documentation not contained in the CPA or DCB meeting Agenda will not be allowed to be introduced by any party at the meeting”*

14. The Applicant submits, in addition, that what may be demanded regarding procedural fairness in the planning appeal process though not specifically set out in the legislation can be gleaned from various relevant authorities. In this regard the Applicant referred to the following:

“47. The Court of Appeal of England and Wales has summarized what fairness requires in the context of planning appeals as follows:

“(1) Any party to a planning inquiry is entitled (i) to know the case which he has to meet and (ii) to have a reasonable opportunity to adduce evidence and make submissions in relation to that opposing case. (2) If there is procedural unfairness which materially prejudices a party to a planning inquiry that may be a good ground for quashing the inspector’s decision.” (Hopkins Developments Ltd v Secretary of State for Communities and Local Government [2014] PTSR 1145, para 62 per Jackson LJ)

15. The Applicant submits that in this instance the process was procedurally unfair because:
- (i) Various pieces of relevant correspondence were not provided to the Respondent. There is no reference to these in the agenda pack or the minutes of the meeting. The Respondent failed to take these into account in arriving at the Decision.
 - (ii) The Applicant was never told what the planning impacts of the alleged use were found to be, and the evidence relied upon to make such a determination. This information was essential to the appeal since the planning impact of any alleged use by the Applicant was a question of fact requiring evidence for its determination. Consequently, the Applicant did not know the case she had to meet.
 - (iii) The close relationship between the Respondent and the Planning Authority which issued the Enforcement Notice gives rise to a perception of a lack of independence, an appearance of bias and an appearance of predetermination.
16. The Applicant argues that the Respondent misdirected itself regarding the meaning of commercial activity. Commercial activity as used in the Development and Planning Regulations is directed towards profit-generating activity. In affirming that there had been a change of use of the property from residential to private, as alleged in the Enforcement Notice, the Respondent misdirected itself that commercial use of the property also applies to events without money changing hands.

17. It was also submitted that the Enforcement Notice appeared to make it a criminal offence to conduct any commercial activity at the property, regardless of its scale and planning impacts. The Appellant submits that:

“This was a case in which an unrepresented appellant submitted that the enforcement notice was unjust and, on the face of the Enforcement Notice, there was an obvious case for concluding that the Enforcement Notice went too far. In those circumstances, it was incumbent on the CPA to consider whether it was appropriate for the Enforcement Notice to be varied pursuant to statutory ground (e). It failed to do so. The agenda pack, the minutes of the CPA’s meeting and the terms of the decision letter indicate that it gave this no thought at all.”

18. The Applicant further submits that the reasons provided by the CPA for its decision were inadequate and:

“In the absence of any explanation in the decision letter as to why the CPA thought a wedding for family friends, for which there was no payment, constituted a commercial use, what the impacts of the wedding were, and why those impacts were thought sufficient to result in a material change of use, there was a critical gap in the CPA’s reasoning which rendered the decision “process irrational””.

19. In considering whether to grant leave to apply for judicial review, the court’s role is to consider whether *“there is some arguable case or claim which is not obviously untenable, vexatious or frivolous”*.¹ The court is not required to go into the matter in great depth at the leave stage or to seek to determine the issues raised by the Applicant. The requirement for leave to apply for judicial review is *“no more than a filter to weed out groundless cases”*²

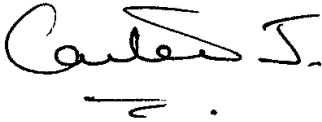
20. In *Ramdass v Minister of Finance and Another*³ the Court stated as follows: *“The threshold for the grant of leave to apply for judicial review is low. Leave will be granted where there is an arguable ground for judicial review with a realistic prospect of success that is not subject to a discretionary bar or other knockout blow.”*

¹ Smith v Commissioner of Police [1980-83 CILR 126]

² Knibbs v Revenue Customs Commissioners [2020] 1 WLR 731, para 25,

³ [2025] UKPC 4

21. Having considered the application, the affidavit filed in support thereof and the grounds of challenge, I am satisfied that the Applicant has met the required threshold for the grant of leave. There are arguable grounds for judicial review.
22. The Court's Order on the application is as follows:
- (i) Leave to apply for judicial review is granted.
 - (ii) Pursuant to O.53 r 5 (2) the Applicant is to serve copies of the Originating Motion, the Affidavit in support, the Order for leave and Form 53 upon the Respondent within seven (7) days of the date of this Order.
 - (iii) The Respondent shall have leave to apply.



Hon. Justice Marlene I. Carter
Judge of the Grand Court