



The Planning Inspectorate

3/F Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0303 444 5601
Customer Services: 0303 444 5000

Ms Caroline Harper
JLL
30 Warwick Street
London
W1B 5NH

Your Ref:

Our Ref: APP/L3625/W/16/3156436

Date: 17 January 2018

Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 AND 322
LAND AT 33-55 BELL STREET, REIGATE, SURREY: APPEAL BY WAGAMAMA
LTD: APPLICATION FOR COSTS**

1. This letter deals with the Secretary of State's re-determination of the costs decision dated 2 February 2017. The decision was quashed by consent, by order of the High Court on 18 July 2017. The application, on behalf of the appellants, for an award of costs against Reigate and Banstead Borough Council was made in correspondence of 12 August and 10 November 2016. The Council responded in correspondence of 3 November 2016. As these representations have been copied to the parties it is not proposed to summarise them in any detail. They have been carefully considered.

Summary of decision

2. The formal decision is set out in paragraph 8 below. The costs application fails and no award of costs is being made against the Council.

Basis for determining the costs application

3. In planning appeals, the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are only awarded on the grounds of "unreasonable" behaviour, resulting in any wasted or unnecessary expense. The application for costs has been considered by reference to the Planning Practice Guidance on awards of costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the correspondence on costs and all the relevant circumstances.

4. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably by failing to produce evidence to substantiate their reason for refusal on appeal.

Reasons

5. The main basis of the application for costs is that the Council acted unreasonably by failing to provide substantive evidence to support their reason for refusal¹. Paragraph 049 of the PPG explains that local planning authorities are at risk of an award of costs against them if they fail to produce evidence to substantiate each reason for refusal on appeal, or make vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

6. The starting point for local planning authorities when considering a proposed development is that it is Plan led. In this case, the Council relied upon Policies Sh1 and Sh7 of the Reigate and Banstead Local Plan to support their decision. While they did not go into great detail regarding the retail impact of the proposal, the Council have provided some justification within their reason for refusal. They also stated in their statement of case that the continued loss of A1 units will compromise the meeting to retail needs; erode opportunities for providing customer and retail diversity and thus compromise the long term vitality and viability of the town centre. The Secretary of State also takes the view that the Council adequately conveyed their objections and considered the NPPF's three facets of sustainable development, within their Planning Officer's report. Therefore, he concludes that although it would have been helpful had the Council elaborated further on their concerns, he cannot be satisfied their defence of their reason for refusal was inadequate and amounted to unreasonable behaviour within the scope of the guidance.

7. The overall conclusion reached is that the Secretary of State is not satisfied, on the evidence available, that the Council has acted unreasonably and caused the appellants to incur wasted or unnecessary expense in the appeal process.

FORMAL DECISION

8. For these reasons, it is concluded that no award of costs against Reigate and Banstead Borough Council on grounds of "unreasonable" behaviour resulting in wasted or unnecessary expense, is justified in the particular circumstances.

9. A copy of this letter has been sent to Reigate and Banstead Borough Council.

Yours faithfully

K McEntee

KEN McENTEE
Authorised by the Secretary of State
to sign in that behalf

¹ The proposed development would, by virtue of the loss of A1 unit and the associated retail frontage in a primary shopping area, result in the significant loss of retail below the 80% threshold required by Policy Sh7. The proposed change of use would thereby erode the vitality and viability of the Centre and in the absence of evidence for the reasonable attempts at letting as a Class A1 retail shop the loss of retail floorspace in the town centre would be contrary to policies Sh1 and Sh7 of the Reigate and Banstead Local Plan 2005.