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## Costs Decision

Site visit made on 15 January 2018

**by Grahame Gould BA MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31<sup>st</sup> January 2018**

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### **Costs application in relation to Appeal Ref: APP/K5600/W/17/3183467 183 Kensington High Street, London W8 6SH**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Five Guys JV Limited for a full award of costs against The Council of The Royal Borough of Kensington and Chelsea.
  - The appeal was against the refusal of the Council to grant approval for access details submitted pursuant to condition 8 imposed on planning permission Ref PP/16/08021.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (the PPG) advises in its section on appeal costs that these 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.
3. The applicant contends that the Council in refusing to accept the use of a temporary access ramp has made a decision that exceeds the requirements of condition 8 imposed on planning permission Ref PP/16/08021 and Policy CL10 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan of 2015 (the Local Plan), the latter being central to the condition's imposition. The applicant contends that the structural evidence it has submitted has demonstrated that there are technical reasons why a permanent internal ramp could not be installed. The applicant further contends that the Council failed to pay regard to the costs associated with installing a permanent ramp and the loss of trade that there would be during the construction period. The applicant therefore argues that it was unreasonable for the Council not to have accepted the use of a temporary access ramp, not least because the circumstances of this case come within the scope of an exception referred to in the Council's adopted shopfront supplementary planning document (SPD).
4. The Council's reason for refusing to approve the use of a temporary ramp is of a precautionary nature, given that it refers to insufficient information having been provided. In determining the appeal I have concluded that the available structural evidence has not demonstrated that an internal ramp could not be installed. The structural engineer's evidence submitted with the appeal recommends against undertaking works to the existing floor slab. However, that evidence does not state that it would be impossible to undertake works to the floor slab, with the engineer stating we 'would advise against

undertaking any works that may impact on the integrity of the existing ground floor slab.

5. The applicant contends that the cost of providing a permanent ramp would run into hundreds of thousands of pounds, in terms of undertaking the works and the loss of trade throughout the course of the works. However, that contention has not been substantiated by detailed evidence, with there being no cost estimate included with the structural engineering evidence or any information from the applicant quantifying what the lost revenue would be while a permanent ramp was being installed.
6. Given the limited evidence provided by the applicant to justify the use of a temporary ramp, I consider it was reasonable for the Council to have arrived at a decision that the applicant had provided insufficient information to support its application. Importantly within the context of the application's consideration against the requirements of Policy CL10 of the Local Plan and the associated guidance in the SPD, the Council's decision was not one that stated a permanent ramp must be provided, but rather that an inadequate justification for the use of a temporary ramp was available. I also consider that the decision made by the Council exhibits no particular inconsistency with others it has made, given that the vast majority of the premises in Kensington High Street have permanent ramps or level accesses.
7. Having regard to the provisions of the PPG, most particularly paragraphs 028, 030, 032 and 049, I consider that it was reasonable for the Council to have refused planning permission. That is because: the development does clearly accord with policy and guidance; the case made by the Council has substantiated its reason for refusal; the reason for refusal was not based on vague, generalised or inaccurate assertions; and there is no clear evidence of the Council making inconsistent decisions.

### **Conclusion**

8. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. The application for an award of costs is therefore refused.

*Grahame Gould*

INSPECTOR