The Planning Inspectorate

Costs Decision

Site visit made on 22 February 2021

by Michael J Muston BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2021.

Costs application in relation to Appeal Ref: APP/H5390/W/20/3257225
102 King Street, London W6 0QW

- 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 Future Leisure Ltd for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
- The appeal was made against the refusal to grant permission for a change of use of the ground floor and basement from shop (Class A1) to amusement centre (adult gaming centre).

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The PPG makes it clear that planning authorities are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. As examples of behaviour that may give rise to a substantive award of costs against a local planning authority, the PPG also lists failure to produce evidence to substantiate each reason for refusal on appeal.

4. The applicant argues that the Council refused a planning application that complies with specific policy relating to non-retail uses in non-prime shopping frontages, that raised no conflict with national policy and where other material considerations indicated that permission should be granted. The applicant also argues that the Council failed to produce evidence to show how the proposal would harm the shopping centre, and simply asserted that it would cause harm.

5. The Council considered, when refusing the application, that it was contrary to development plan policy. In particular, it appears to have decided that the proposal would not be complementary to the shopping frontage, would not contribute to the function of the centre, would be part of an unacceptable

concentration of similar uses, and would therefore be contrary to Policy TLC2 of the Hammersmith & Fulham Local Plan (2018) (LP). This was at least partly because paragraph 6.9.5 of the then emerging London Plan (now the London Plan 2021) says that over concentrations of some uses, including amusement centres, can give rise to particular concerns regarding the impact on, amongst other things, vitality and viability. I did not agree with the Council on this point; however it appears that some of the information that informed my decision was only submitted by the applicant at the appeal stage, and was therefore not before the Council when it made its decision.

6. The Council sought to explain, in its delegated report and its supporting statement submitted in relation to the appeal, why it considered the proposal was contrary to policy. It did not state explicitly what specific harm to the vitality and viability of the town centre it considered would result from the appeal proposal, but rather sought to rely on an explanation of why it considered the proposal to be contrary to development plan and, at that time, emerging policy. The Council was entitled to place significant weight on relevant development plan policies. The lack of an explanation as to precisely what harm would arise was a weakness of its case. However, on the basis of the evidence in front of it at the time of refusing the application, I do not consider that its refusal of the application amounted to unreasonable behaviour.

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

Michael J Muston

INSPECTOR