



Costs Decision

Site visit made on 25 May 2021

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Costs application in relation to Appeal Ref: APP/V5570/W/20/3261104 113-115 Fonthill House, Fonthill Road, Islington, London N4 3HH

- 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 Limited for a full award of costs against the Council of the London Borough of Islington.
 - The appeal was against the refusal of planning permission for change of use of the ground floor from betting office (sui generis) to amusement centre (adult gaming centre) (sui generis).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that appeal costs 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 Guidance makes it clear that a local planning authority may be at risk of a substantive award of costs if it fails to produce evidence to substantiate its reasons for refusal at appeal, and/or makes vague generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Similarly, local planning authorities may also be at risk of an award of costs by preventing or delaying development which should be clearly permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The Council contends that the reasons for refusal have been fully substantiated with clear evidence and relevant legislation being cited.
5. However, in allowing the appeal I have found that the proposal would have no adverse effect on the character and function of the Finsbury Park Town Centre. The Council's concerns about the effect of betting and gambling facilities on vulnerable people were vague, generalised, and crucially, were unsupported by evidence of an overconcentration of such uses in the area. In addition, its concerns relating to reducing footfall and resulting in a less attractive frontage were assertions made without any objective analysis, or evidence. Also, given the previous use, the suggestion that the proposal would break up the retail frontage was inaccurate.
6. Moreover, despite acknowledging that the previous use was sui generis, not retail, the Council cited conflict with Policy DM4.5 of Islington's Local Plan:

Development Management Policies (2013), which clearly only applies to “proposals to change the use of existing retail premises”, and was therefore misapplied to the proposal.

7. I therefore consider that the refusal of planning permission was ill founded, with that decision preventing development which should clearly be permitted, having regard to its compliance with the development plan. Accordingly, I find that the Council has acted unreasonably with respect to the substance of the appeal, as a result of which the applicant has been put to the unnecessary expense of lodging the appeal.

Conclusion

8. For the reasons given, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Islington shall pay to Future Leisure Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council of the London Borough of Islington, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Caines

INSPECTOR