



Costs Decision

Site visit made on 28 September 2021

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Costs application in relation to Appeal Ref: APP/T5150/W/21/3268900 141 Kilburn High Road, Kilburn, London NW6 7HT

- 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 London Borough of Brent.
 - 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 refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that 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. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and failure to produce evidence to substantiate each reason for refusal on appeal.
4. It can be seen from my decision that I have found that the proposal is contrary to Policies DMP1 and DMP3 of the London Borough of Brent Local Plan Development Management Policies 2016 with regards to the issues of vitality and viability of the Kilburn Town Centre and effects in terms of noise and disturbance. I note the appellants comments in relation to a material breach of the policy, evidence of noise disturbance and there being no conflict with national policies with other material considerations indicating that permission should be granted. The proposal would contradict with policies of the relevant development plan and the Council have therefore not acted unreasonably in this regard.
5. It is indicated that the refusal reason was originally based on a figure of 5% and the appellant had to bring the matter to appeal to challenge that incorrect conclusion underlying the refusal. The Council have indicated that an update of the town survey could not be done due to Covid restrictions. Even if the Council had erred with regards to the figure presented at the application stage and

acted unreasonably this still would not have prevented the application being refused or the need for the appeal to be submitted. I therefore find that the appellant has not have incurred any additional expense as a result of this matter.

6. I have found that there was insufficient evidence to convince me that the conversion of a betting shop to an adult gaming centre would result in a significant increase in crime, disorder and anti-social behaviour. The Council have provided vague assertions about a proposal's impact, which are unsupported by any objective analysis. Nevertheless, this would not have prevented the submission of the appeal and the appellant has not incurred any additional cost in having to respond to this part of the refusal reason.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Chris Baxter

INSPECTOR