



Costs Decision

Site visit made on 19 October 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2021

Costs application in relation to Appeal Ref: APP/V5570/W/21/3278006 310-312 Caledonian Road, Islington, London N1 1BB

- 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 City Gaming Ltd 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 the change of use from vacant betting shop to adult gaming centre.
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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 (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. The applicant submits that the Council has adopted an overly narrow approach in the application of policies. They contended that the proposed change of use from a betting shop to an adult gaming centre (AGC) would lead to an unacceptable over-concentration of harmful uses within the Local Shopping Area (LSA). However, their own Policy DM4.3 groups both uses under the same category, therefore it cannot be reasonably concluded that a change from one to the other would lead to a change in their concentration. The Council also contended that the proposed use would be 'harmful', despite Policy DM4.3 grouping them together in terms of their nature. There is no evidence to suggest that any harm would arise from the change in use, particularly given the similarities with the site's fallback use as a betting shop.
4. In response, the Council states that emerging Local Plan Policy R4 requires proposals for non-A1 commercial uses to be assessed on a case-by-case basis. Whilst the applicant deems the uses to be similar so that they would not lead to an overconcentration and would therefore not be deemed harmful, the Officer's Report detailed the evidence within the Local Plan Topic Paper *Retail, Leisure and Services, Culture and Visitor Accommodation 2020* (LPTP) which details the negative impacts the use can have where there are high concentrations of these type of uses. It is important to note that AGCs are not specifically detailed within Policy DM4.3, Part A, although casinos are mentioned.
5. The Officer's Report goes on to detail the harm from the proposed use detailed in this case, and in this particular site location. The report also details an

appeal¹ where the introduction of an AGC would be concentrated in an area where the population is more susceptible to gambling related harm as a result of the previously noted issues surrounding deprivation. As detailed in the Officer's Report it is considered that the introduction of this use in this location fails to provide a use that would maintain and enhance the retail and service function of the LSA, which would detrimentally affect the character and function of the Caledonian Road LSA.

6. The Council relies on both the relevant development plan policies and its LPTP to support its case and to demonstrate the concerns arising from AGC uses. Whilst Policy DM4.3 does not specifically refer to AGCs, it does list casinos, betting shops and amusements centres and other similar uses. It is reasonable to consider an AGC to be a similar use, and the Council draws attention to the LPTP which itself considers betting shops and AGCs in combination. In this context, the Council's case does not substantively demonstrate how the proposal would be in conflict with the policies of the development plan and how harm would be caused from the proposed change of use, given that there would be no change in the concentration of these similar uses.
7. The circumstances in the previous appeal decision referred to are not directly comparable to those of the appeal proposal. That case related to a property that was in A1 retail use and it would have resulted in both the loss of a retail unit and an increase in the number of betting shops/AGC, which the Inspector found would result in an unacceptable concentration. It does not therefore support the approach that the Council has taken in their assessment of the appeal proposal and the reference to it further suggests a failure to assess the proposed development upon its own merits and in the context of the existing use of the appeal site.
8. For these reasons, I consider that the Council have relied on vague and generalised assertions which are unsupported by any objective analysis of the appeal proposal itself. As a result, a development that should have been permitted has been prevented. This represents both unreasonable behaviour and means that wasted expense in pursuing the appeal has been incurred, and 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 City Gaming Ltd, 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.

Graham Wraight INSPECTOR

¹ APP/V5570/W/20/3257308