The Planning Inspectorate

Costs Decision

Site visit made on 12 January 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Costs application in relation to Appeal Ref: APP/T5150/W/21/3279627
Ground Floor of 574 High Road, Wembley HA0 2AA

- 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 Chongie Entertainment Limited for a full award of costs against Brent Council.
- The appeal was against the refusal of planning permission for the change of use from betting office (sui generis) to adult gaming centre (sui generis).

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The applicant states the Council incorrectly interpreted the requirements of Policy DMP3(d) of the London Borough of Brent Local Plan Development Management Policies, November 2016; used incorrect figures in the assessment of the proposal against the criteria of then Policy DMP3(b); and provided no evidence of the impact of the proposal on the viability and vitality of the area, which formed a part of the reason for refusal.

3. Citing the PPG, the applicant contends that the Council has therefore prevented or delayed development which should clearly be permitted; not determined similar cases in a consistent manner; failed to provide information pertinent to the decision; provided information that is shown to be manifestly inaccurate or untrue; and failed to produce evidence to substantiate each reason for refusal, making vague, generalised and inaccurate assertions unsupported by objective analysis.

4. The wording of Policy DMP3, now replicated in Policy BE5 of the Brent Local Plan 2019 – 2041, allows for an element of interpretation, particularly with respect to the presence of surrounding uses and the test under Policy DMP3(d), which the appellant states was incorrectly interpreted by the Council. Indeed, a previous decision has dealt with the same point, agreeing with the stance of the appellant. My appeal decision in this case is clear that I too agree, broadly, with the appellant's interpretation in this regard. However, this is a matter of planning judgement rather than a black and white issue.

5. Indeed, policy interpretation is an issue that the appeal process fundamentally seeks to resolve. The Council have, in my view, presented a rational view of a potential interpretation of that policy with reference to its aims and to the potential

implications of the scheme. Therefore, while I have not agreed with the alternative interpretation of Policy DMP3(d) by the Council, I do not find their reasoning to be irrational or strained such that it constitutes unreasonable behaviour.

6. With regards to the specific requirements of Policy DMP3(b), I acknowledged that the Council ultimately accepted the applicant's alternative approach to this assessment during the appeal process, an approach that the Council itself has previously adopted for other applications. However, the compliance of the proposal with the specific requirements of Policy DMP3(b) was not the only element in the reason for refusal.

7. Finally, I do not agree with the applicant's assertion that the Council has failed to provided evidence of the impact of the proposal on the viability and vitality of the surrounding area. It is a reasonable interpretation of superseded Policy DMP3 and current Policy BE5 that it seeks to directly address the viability and vitality of the area in ensuring a diverse range of units and preventing an overconcentration of uses within a frontage. The Council's evidence is clear that the proposal has been refused as it was not considered to comply with this policy, and reasoning of this stance is provided. It is not the function of a planning appeal to re-evaluate the justification for a particular development plan policy. In this sense, the Council's overall case is clear, precise and backed up with evidence that directly addresses the reason for refusal.

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated, and an award of costs is not justified.

C Rafferty

INSPECTOR