



Costs Decision

Site visit made on 17 January 2022

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Costs application in relation to Appeal Ref: APP/F5540/W/22/3304456 237-239 High Street, Hounslow TW3 1EA

- 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 Merkur Slots UK Ltd, for a full award of costs against the Council of the London Borough of Hounslow.
 - The appeal was against the refusal of planning permission to convert the building containing 9no. flats to 4no flats (Use Class C3), car parking, extension to existing basement, two storey rear extension, replacement fenestrations at front of the property, replacement and new fenestrations to rear and rear patio.
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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, 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 or wasted expense in the appeal process.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant considers that the Council behaved unreasonably by failing to provide evidence to substantiate the reason for refusal and as a result this has put the applicant to unnecessary expense in commissioning the appointment of a planning consultant, a noise report and observation report.
5. Citing the PPG, the applicant contends that the Council did not raise any concerns about the proposal at the planning application stage and provided no justification for why they considered the proposal would result in anti-social behaviour and harm to public safety, despite there being no reported issues from the current use or other local 24 hour operating adult gaming centres, no objections from the Police, the issuing of a 24 hour gaming licence for the premises and only one neighbouring resident objection.
6. Furthermore, the applicant considers they had no option but to submit a noise report and an observation report at the appeal stage to address the Council's concerns raised in the officer report, even though noise was not stated as a reason for refusal on the decision notice.

7. The Council have not responded to the costs application.
8. I find the Council's reason for refusal to be unclear in setting out what harm would be caused to the living conditions of neighbouring residents other than a reference to 'late night activity in the interests of public safety'. Little evidence has been put forward by the Council to support this reasons for refusal and establish that there is an existing noise, disturbance or public safety problem in the vicinity of the appeal site, and if so, how this would be made worse by the appeal proposal.
9. Although the officer report refers to a risk that the proposal would attract clientele likely to interrupt quiet living conditions of occupiers of neighbouring properties, no further objective analysis is provided. The officer report focuses on three other adult gaming centres that it is claimed are opening 24 hours when the authorised opening hours are less but does not provide any assessment of the effect of these during night time hours as a basis for evaluating the impact of the appeal proposal.
10. In the planning judgement, even though no noise assessment was submitted by the applicant at the time of the planning application, it appears to me that having regard to the development plan, particularly the strong support for an active and diverse night time economy in Hounslow town centre, national planning policy and other relevant considerations such as the lack of objection from Environmental Health or the Police, the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

12. 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 London of Borough of Hounslow shall pay to Merkur Slots UK Ltd, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to the London of Borough of Hounslow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Ann Veevers

INSPECTOR