
Costs Decision

Site visit made on 12 June 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Costs application in relation to Appeal Ref: APP/M2515/W/22/3311043 291 High Street, Lincoln LN2 1AL

- 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 Mr Ian Miller, Luxury Leisure for a full award of costs against Lincoln City Council.
 - The appeal was against the refusal of planning permission for the change of use from retail (Class E) to Adult Gaming Centre (AGC) (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. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. In this case, the appellant argues that the Council acted unreasonably in failing to provide any substantive evidence to justify its reasons for refusal at appeal. This led to an unnecessary appeal, wasting both time and expense in order to obtain planning permission which should have been granted by the Council.
4. The reasons for refusal were based on Policy LP33 of the Central Lincolnshire Local Plan 2017 (the CLP) which sought to retain a minimum of 80% of the Primary Shopping Frontage concerned in Use Class A1 (retail use). The AGC proposal, a sui generis use, would conflict with this policy. However, this failed to recognise that the policy was fatally undermined by the introduction in September 2020 of Use Class E which subsumes Class A1 retail uses into a new Use Class E which includes a more diverse range of uses suitable for town centres and allows flexibility between them. This removed the ability to protect retail units in the frontage and rendered the policy ineffective.
5. Indeed, the Council appreciated this when preparing Policy S36, the successor to Policy LP33 in the latest version of the CLP adopted in April 2023. This plan was submitted for examination in July 2022, prior to the determination of the application, and was plainly a material consideration. However, the Council made no reference to the emerging plan in the officer report on the application or in its appeal submissions, nor the final adoption of the plan, until asked to comment on 23 May 2023. Only at this point did the Council accept¹ that 'if a

¹ Letter dated 5 June 2023

new application for the proposed use were to be submitted and considered under S36, it is likely that it would be granted’.

6. The failure to take account of the introduction of Use Class E and emerging Policy S36 when determining the application, and furthermore the failure to recognise its relevance earlier in the appeal process, amounts to unreasonable behaviour. The Council should have realised in August 2022 that the policy basis for its decision was fatally undermined.
7. The Council therefore behaved unreasonably in refusing the application without adequate reasons that could be substantiated at appeal. By delaying a development which should clearly be permitted the Council have acted unreasonably and caused the appellant unnecessary and wasted expense in needing to pursue an appeal.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice 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 Lincoln City Council shall pay to Mr Ian Miller, Luxury Leisure the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Lincoln City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Reed

INSPECTOR