



Costs Decision

Site visit made on 6 November 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Costs application in relation to Appeal Ref: APP/X5990/W/23/3324056 100-102 Century House, Ground Floor, Oxford Street, London W1D 1LL

- 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 Luxury Leisure for a full award of costs against the City of Westminster Council.
 - The appeal was against the refusal of the Council to grant planning permission for the change of use of the ground floor from a retail unit (Class E) to an adult gaming centre (sui generis) with external alterations and associated works.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal. The applicant's claim for costs is made on the grounds that the proposal accords with the development plan and should have been permitted. They consider that the Council have misapplied policies to justify the reason for refusal.
4. The application essentially relies on the fact that officers recommended that planning permission be granted for the proposal, but that the Planning Committee took a different course of action. However, the Council is not duty bound to follow the advice of its professional officers.
5. The reason for refusal set out in the Council's decision notice is complete and relevant to the proposal, referencing the relevant policy of the City of Westminster City Plan (CP) that the proposal was considered to be in conflict with. The Council's statement of case explicates the reason for refusal in more detail. It took a narrow view of the interpretation of Policy 14 of the CP regarding the appropriateness of the proposed leisure use. While I have not shared the Council's view in relation to this matter and I have allowed the appeal, it does not indicate that the Council were unreasonable in their approach.
6. It has not been demonstrated that the Council deliberately sought to prevent development that should have been permitted. Instead, it highlights the

difference of opinion between the parties, in respect of the planning merits of the proposal and the particular interpretation of CP Policy 14.

Conclusion

7. Although I understand the applicant's frustration with their perception of the Council's approach, insofar as is relevant to this costs application, based on the evidence before me, it has not been demonstrated that any action by the Council amounts to unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG. Therefore, an award of costs is not justified.

M Clowes

INSPECTOR