



Costs Decision

Hearing held on 26 February 2025

Site visit made on 26 February 2025

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Costs application in relation to Appeal Ref: APP/P4605/W/24/3356275 173-175 Soho Road, Birmingham B21 9SU

- 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 Birmingham City Council.
 - The appeal was against the refusal of planning permission for a change of use of the ground and first floor from a retail unit (Class E) to an adult gaming centre (Sui Generis) with first floor associated storage and staff area including external alterations and associated works.
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Decision

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

The submissions

2. The costs application was submitted in writing by Luxury Leisure and the response was made orally by Birmingham City Council at the hearing.

Reasons

3. 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.
4. The application essentially relies on four main reasons, firstly the Council failed to produce evidence to substantiate its reason for refusal as the evidence it has produced does not show a correlation between granting permission for the proposed use and an increase in anti-social behaviour and/or crime. Rather the fact that the area is subject to a Public Space Protection Order (PSPO) and would be licensed shows that there are other mechanisms for controlling wider problems that are unrelated to the presence of existing licensed premises for gambling.
5. Secondly, the Council's objection to the proposal is based upon vague, generalised and inaccurate assertions about the impact of the proposal which are unsupported by any objective analysis. Thirdly, the Council has adopted an inconsistent approach to previous decisions and failed to determine similar cases in a consistent manner and, finally, the Council has recently had an award of costs made against it in respect of a previous decision for a similar scheme and have continued to act against officer recommendations despite clear warnings that there is insufficient evidence to do so.

6. The Council do not accept that it has failed to substantiate its reasons for refusal as the West Midlands Police (WMP) have produced crime data and have outlined the significant crime and anti-social behaviour that is a characteristic of the area. They highlight that the fact that there is a PSPO in force and the applicant would need to obtain a licence for the proposed use if planning permission was granted are separate matters and does not remove the need to consider material planning considerations.
7. Further the Council sets out that each case needs to be determined on its individual merits, and they consider that the applicant is over reliant on previous appeal decisions. They also indicate that although costs have been awarded in a separate case it does not mean costs should be awarded in this case. Finally, the Council highlight that a Hearing is an informal procedure and there was no need for the applicant to instruct Counsel and so in the event that costs are ultimately awarded these disproportionate costs should not form part of the award.
8. When considering the available evidence, as outlined in the appeal decision, it is apparent that the area currently suffers from significant levels of anti-social behaviour. I also accept the evidence of WMP and other interested parties that the area suffers from a significant level of crime. WMP have also provided some crime statistics in relation to other adult gaming centres (AGC) in Birmingham.
9. In my view it was legitimate for the Council to give weight to the information provided by WMP whose view was clear and unequivocal that the proposal would cause a rise in anti-social and criminal behaviour.
10. As set out in my appeal decision, I have taken account of fear of crime and anti-social behaviour as a material consideration and that was the basis for the reason for refusal. Consequently, overall, I am satisfied that whether or not the proposal would create a safe environment that promotes positive social interaction with particular regard to the fear of crime and anti-social behaviour was a matter of planning judgement and the Council's appeal statement and the evidence from WMP, the Council and interested parties prior to and at the Hearing, made a sufficient case to support the Council's view. Their judgement was supported by specific references to Policy PG3 of BDP and to the Framework. While I have come to a different judgement on the planning merits, I consider that the approach of the Council was arguable and based on sufficient evidence to support its case. Therefore, including this matter as a reason for refusal did not result in unreasonable behaviour.
11. I acknowledge that there are other mechanisms for controlling wider problems in relation to crime and anti-social behaviour such as the PSPO. I also accept that the licensing regime would also cover crime and disorder. However, that does not mean that crime and anti-social behaviour should not be assessed during the planning process.
12. I turn now to consider whether or not the Council have taken an inconsistent approach and have not taken adequate account of previous appeal decisions. In the cases that have been brought to my attention by the applicant, it does seem to suggest that like me, the Council's officers and other Inspectors have not been persuaded in each case that the fear of crime and/or anti-social behaviour would justify withholding planning permission. However, these other cases are in different parts of Birmingham, in the particular circumstances of those areas and

surroundings I do not have such detailed information about what evidence was presented in support of each case to meaningfully compare them with the case before me. Consequently, the fact that the Council have reached different conclusions on other cases and previous Inspectors have allowed appeals for AGCs in other parts of Birmingham does not alter my view that in this case the Council have acted reasonably.

13. Similarly, the fact that costs have been awarded against the Council in a case involving another AGC at Bristol Road South in Birmingham does not change my view on whether or not they have acted reasonably in this case before me. Although I do not have all of the details of this other case, I note that it was rejected by the Council on viability and vitality grounds where the Inspector judged that the proposal complied with the relevant development plan policy and would assist in retaining investment in the area. In awarding costs, this Inspector noted that according to the minutes of the planning committee, members were concerned about anti-social behaviour, problem gambling and the fear of crime rather than viability concerns and on that basis, he found that the Council were unable to reasonably substantiate the reason for refusal. That is materially different from the case before me and consequently this other case does not weigh in favour of an award of costs.
14. So, bringing everything together, in my judgement, the Council's case with supporting evidence was sufficient to raise a legitimate concern as to whether the proposal would create a safe environment that promotes positive social interaction with particular regard to the fear of crime and anti-social behaviour. Overall, the appeal was not avoidable, and the Council has not acted in such a way that it should be considered to be unreasonable behaviour that has led to unnecessary or wasted expense in the appeal process to justify an award of costs.
15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

S Rawle

INSPECTOR