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## Costs Decision

Site visit made on 5 May 2025

**by R Cahalane BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 7 July 2025**

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### **Costs application in relation to Appeal Ref: APP/D1780/W/24/3358051**

#### **37A Oxford Street, Southampton SO14 3DP**

- 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 Ms Dawn Wastell (Genco Restaurant & Bar Ltd) for a full or partial award of costs against Southampton City Council.
  - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
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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) states 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. The PPG further sets out that unreasonable behaviour on the part of a local planning authority (LPA) in substantive terms may include unreasonably refusing planning applications, for example preventing development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The list of examples provided by the PPG is not exhaustive.
4. As set out in my appeal decision, the City Centre Action Plan (CCAP), adopted 2015, forms part of the Development Plan. Whilst I did not agree with the LPA that the proposal could be construed as setting a precedent for other premises with similar restrictions, it remains that the proposed extended opening hours go beyond midnight, contrary to Policy AP8 of the CCAP.
5. I found the proposal to be compliant with the development plan when read as a whole. This is however not a mathematical exercise, and ultimately turns on the planning judgement of the decision maker.
6. CCAP Policy AP8 supports a night time economy to contribute to a vibrant city centre, whilst minimising potential disturbance to nearby residential areas. Planning decisions within its designated areas will often inevitably involve competing interests to be weighed in the balance. The CCAP is supported by its own evidence base, and was subject to public consultation and examination.

Therefore, whilst I afforded less weight to the conflict with Policy AP8 than the LPA, I have not found its judgement to be unreasonable in substantive terms.

7. The LPA could have worked more proactively by providing details of the precise contributions, relative to the specific proposed development, that it deemed necessary to make the proposal acceptable in planning terms. The LPA's decision to refuse planning permission did not however solely turn on that issue alone. The appellant also did not provide a legal mechanism and thus their time and expense expended on this specific issue appears to be limited.
8. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and a full or partial award of costs is not warranted.

*R Cahalane*

INSPECTOR