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## Costs Decision

Site visit made on 7 August 2017

**by Gareth Wildgoose BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18<sup>th</sup> August 2017**

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### **Costs application in relation to Appeal Ref: APP/G4240/W/17/3171363 5 Market Place, Hyde, Tameside SK14 2LX**

- 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 Thornbraid Ltd for a full award of costs against Tameside Metropolitan Borough Council.
  - The appeal was against the refusal of planning permission for change of use from a range of flexible uses A1, A2, A3, A4 and A5 to A1, A2, A3, A4, A5 and Betting Shop (Sui Generis).
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### **Decision**

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

### **Reasons**

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters such as a lack of co-operation with other parties. Unreasonable behaviour can also include substantive matters such as failure to produce evidence to substantiate a reason for refusal on appeal and vague and generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. The application for costs relates to each of these matters listed as examples.
4. The applicant engaged in correspondence with a Council officer after the planning application was submitted and before it was determined. The Council officer indicated by e-mail on 27 October 2016 that the decision had been delayed due to the proposal having been called in to a Speakers Panel (Planning Committee) arising from a councillor objection. The Council officer indicated an intention to recommend approval when referring the application to the next Speaking Panel meeting on 16 November 2016, with an extension of time subsequently agreed with the applicant until 21 November 2016.
5. Based on the evidence before me, Council procedures require that provisional officer recommendations be considered by the Development Manager before submission to the Speaking Panel. In such circumstances, the Development Manager is not duty bound to agree with the officer recommendation. It is reasonable that should the officer recommendation be altered, it could result in

- a change of procedure, whereby applications are withdrawn from the Speaking Panel and determined via powers delegated to the Development Manager.
6. The correspondence before me indicates that the applicant was informed by the Council on 9 November 2016 of a change of procedure, but the Council have offered no evidence that a response was provided to subsequent requests sent by the applicant to officers for clarification of the reasons. The Council's lack of communication with the applicant after 9 November 2016 and the unexplained delay in determining the planning application until 9 December 2016 has not been justified and therefore, consists of unreasonable behaviour. However, based on the evidence submitted by both parties as part of the appeal, communication between the applicant and the Council during that period would not have resulted in a different decision. Consequently, the Council's substandard communication with the applicant, whilst unreasonable behaviour, did not cause wasted expense in the appeal process as a result.
  7. Turning to the substantive matters, the reasons for refusal set out in the decision notice are complete, precise, specific and relevant to the application. The reasons for refusal clearly identify what the Council considers to be harmful and refers to conflict with Saved Policy 1.7 of the Tameside Unitary Development Plan (UDP) and the National Planning Policy Framework. The applicant's appeal submission was detailed with extensive appendices providing supporting evidence. In response, the Council have sought to substantiate the reason for refusal via a statement of case which accompanies the officer report. In doing so, the extent to which the Council address the appeal submissions remains at their discretion when seeking to substantiate the reasons for refusal.
  8. Within my appeal decision, the reasons for refusal are consolidated into a single main issue as they both relate to the effect upon the viability and vitality of Hyde Town Centre, including the outdoor market. I find the Council approach of determining the planning application on the basis of a primary shopping area identified by the UDP, rather than evidence in a Tameside Retail Study published in 2010 and a draft Hyde Town Centre SPD published in 2011, to be reasonable. In that context, it will be seen from my decision that similarly to the findings of a previous Inspector relating to an appeal at the site in 2012, I found conflict with Saved Policy S4 of the UDP due to the potential for a dominant grouping of non-retail uses. However, in my judgement, the conflict with that policy is now outweighed by other material considerations. Influential material considerations are that the ground floor unit is no longer in use as a shop and there is evidence of unsuccessful marketing of the vacant unit, together with the fallback position of an extant planning permission for a range of non-retail uses and the permitted changes of use between retail and some non-retail uses following changes to the GPDO<sup>1</sup>.
  9. With regard to the above, the Council's officers report recognised that ongoing vacancy of the premises which has occurred for a considerable period of time and changes to the GPDO were significant factors in the previous decision to grant planning permission for a range of flexible uses A1, A2, A3, A4 and A5. It reasonably follows that the Council took account of those factors and made a judgement relative to the proposal before me that such matters, including the potential for the unit to remain vacant in the future, were outweighed by the

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015

harm they perceived in terms of the provision of a betting shop. In that respect, I take a different view as I concluded that the addition of a betting shop in the location as proposed and relative to those existing would not result in unacceptable homogenisation, predominance or clustering of such uses or harm to the viability and vitality of Hyde Town Centre, including the outdoor market, as a result.

10. Notwithstanding the above, such a conclusion arises from a matter of judgement on a subjective issue relating to the proposal's impact, in circumstances where there are no Saved Policies in the UDP or guidance that identify specific thresholds for concentrations of individual non-retail uses in town centres or primary shopping areas. Although a number of appeal decisions were drawn to my attention by the applicant relating to betting shops having been permitted where others are close by, they were not direct parallels as they related to locations in other districts with a range of circumstances and where different development plan policies applied. Consequently, I cannot find that the Council behaved unreasonably in reaching a different view to my own given the subjectivity of judgements made, irrespective of the outcome of the appeal.
11. Having regard to the above and based on the evidence before me, I cannot conclude that an appeal was unnecessary in this case. The individual circumstances of the proposal necessitated assessment on its own merits given the subjectivity of issues in dispute and judgements involved. The applicant, therefore, did not suffer wasted expense in pursuing the appeal, despite its outcome and the unreasonable behaviour of the Council identified in terms of a procedural matter.

### **Conclusion**

12. I conclude that, on the basis of the evidence before me, it has been demonstrated that the Council behaved unreasonably with respect to a procedural matter only. However, in the particular circumstances of this case, I am not satisfied that the unreasonable behaviour caused unnecessary or wasted expense for the applicant in the appeal process in so far as an award of costs could be justified. I, therefore, determine that the costs application should fail and no award is made.

*Gareth Wildgoose*

INSPECTOR