

---

## Costs Decision

Hearing held on 26 March 2025

Site visit made on 26 March 2025

**by N Praise BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 April 2025

---

### **Costs application in relation to Appeal Ref: APP/Z3635/W/24/3348201**

#### **39 Church Road, Ashford, Surrey TW15 2QF**

- 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 Astro Property (MK) Ltd for an award of costs against Spelthorne Borough Council.
  - The appeal was against the refusal of planning permission for development described as a change of use of basement and ground floor from a vacant bank to an adult gaming centre (AGC).
- 

### **Decision**

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

### **Background**

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("the 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. The applicant states that the Council acted unreasonably as it failed to use planning conditions to secure an acceptable development and then relied on a condition at appeal to protect the living conditions of residential occupiers as well as a separate condition which duplicated other legislation. The applicant also says the Council's case was not adequately supported by evidence with an over reliance on the development plan and a failure to give appropriate weight to the National Planning Policy Framework ("the Framework").

### **Reasons**

4. Councils are invited to submit without prejudice suggested planning conditions in the event appeals against their decisions are successful. This is standard procedure and does not undermine their case at appeal. A Noise Assessment ("the NA") was submitted with the application and the Council found that the NA had not adequately shown that noise impacts could be satisfactorily mitigated.
5. As part of my decision, I also found deficiencies with the NA and shared some of the Council's concerns. While I ultimately did impose a condition limiting the hours of operation, this was because the planning application, and subsequent appeal, was originally lodged as a 24-hour operation; it wasn't until the Hearing that the applicant suggested a condition to control the hours of operation.

6. Turning back to the Council's suggested NA condition, the purpose of providing this condition was to ensure compliance with the NA in the event I had found it to be acceptable in contrast to the Council's findings. This is standard practice and not unreasonable behaviour.
7. I also note another condition was suggested by the Council to agree security measures to minimise the risk of crime. This was a 'without prejudice' condition and while I found the condition to be unnecessary, the justification for its imposition as set out by the Council was not unreasonable given its legitimate concerns.
8. The impact of the proposed shopfront on the vitality and viability of the town centre was a matter of planning judgement. Given the Council found it to be unacceptable, I do not see how a condition could have made it acceptable.
9. In coming to my overall findings as part of the appeal, I considered the evidence set out in the Council's delegated report, statement of case and oral evidence given at the Hearing. The Framework is mentioned in the documents and was referred to at the Hearing. The Council's evidence is coherent and reasonably presented, it refers to the relevant development plan policies and the Framework as a material consideration in its decision. This is a rational approach and shows how the Council arrived at its decision considering the policies in the development plan and any other material considerations.
10. While I ultimately did not agree with the Council, and allowed the appeal subject to conditions, the Council's reasons and conclusions were logically presented and adequately substantiated in evidence.

### **Conclusion**

11. As a result, having considered the above, I conclude that unreasonable behaviour by the Council, as described in the PPG, has not been clearly demonstrated. Therefore, unnecessary or wasted expense has not been incurred by the applicant. Consequently, the application for an award of costs is refused.

*N Praine*

INSPECTOR