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## Costs Decisions

Site visit made on 18 April 2017

**by Beverley Wilders BA (Hons) PgDurp MRTPI**

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

**Decision date: 20 June 2017**

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### **Application A: Costs application in relation to Appeal Ref:**

**APP/E5330/W/17/3166474**

**62A Westcombe Hill, Greenwich, London SE3 7DY**

- 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 Wyse Cars for a full award of costs against Royal Borough of Greenwich Council.
  - The appeal was against the refusal of planning permission for change of use of storage land to car and van hire (sui generis use) erection of portacabin reception/office/awning.
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### **Application B: Costs application in relation to Appeal Ref:**

**APP/E5330/Z/17/3166478**

**62A Westcombe Hill, Greenwich, London SE3 7DY**

- The application is made under section 322 of the Town and Country Planning Act 1990, Regulation 17 of the Town and Country Planning (Control of Advertisements) Regulations 2007, and section 250(5) of the Local Government Act 1972.
  - The application is made by Wyse Cars for a full award of costs against Royal Borough of Greenwich Council.
  - The appeal was against the refusal of advertisement consent for an advertisement comprising an aluminium composite (Dibond) panel with illuminated fret cut letters & logo 1.00 (H) x 2.00 (W) x 0.07 (D) M.
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## **Decisions**

### **Application A: APP/E5330/W/17/3166474**

1. The application for an award of costs is allowed in the terms set out below.

### **Application B: APP/E5330/Z/17/3166478**

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

## **Reasons**

3. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. Paragraphs 046 to 049 set out the circumstances when the behaviour of a local planning authority might lead to an award of costs. These can either be

procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.

5. Examples of unreasonable behaviour by a local planning authority include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; vague, generalised or inaccurate assertions about a proposal's impact and acting contrary to, or not following, well-established case law.

#### Appeal A

6. The appellant's case is essentially that the development accords with the development plan and other material considerations, that the reasons for refusal are vague, generalised and inaccurate and that the Council has not followed well-established case law relating to the fall-back position being a material consideration.
7. It is clear from the Council's Officer report and Statement that rather than assessing the use and development as detailed within the planning application, the Council instead assessed the use that was allegedly taking place on the site and was adversely affecting the living conditions of adjoining occupiers. As stated within my decision letter, whilst I have some sympathy with the concerns of local residents, these appear in the main to relate to a car repair use and not to the car and van hire use being applied for. Therefore in assessing the impact of the alleged use rather than the use detailed within the application, the Council behaved unreasonably.
8. The Council's reason for refusal focuses on noise, light, vibration and odour. However the Council's concerns as set out within its Officer report and Statement regarding noise and odour relate to the car repair use and not to the car and van hire use being applied for. The Council has produced no evidence to substantiate its reason for refusal with no assessment at all of light and vibration impact. In addition there is no assessment of the relative impact of the car and van hire use and the previous use of the site for storage. As set out in my decision letter, I consider the car and van hire use to be in accordance with the development plan.
9. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary and wasted expense as described in the NPPG has been demonstrated. Accordingly a full award of costs is justified.

#### Appeal B

10. The appellant's case is essentially that the proposal accords with the development plan and other material considerations, that the reasons for refusal are vague, generalised and inaccurate and that the Council has not followed well-established case law relating to the fall-back position being a material consideration.
11. The Council's reason for refusal focuses on the size, location and proposed illumination of the sign. Consequently I consider that the reason is not vague or generalised and as can be seen from my decision letter I agree with the Council about the adverse impact that the advertisement would have on the Conservation Area. The reason is not therefore inaccurate.

12. Whilst there is evidence of a previous storage use on the site, I have not seen any evidence of any previous signage and in any event, there is no signage on site at present or any information provided about the circumstances relating to the existing hoarding advertisements nearby. Whilst it may be the case that any commercial use of the site would likely give rise to the need for advertising, the form and location of any such advertising is unknown. Consequently I consider that any previous use of the site or previous signage is not determinative and for the reasons stated in my decision letter, the proposal is not in accordance with the development plan.
13. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is not justified.

### **Costs Order**

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Royal Borough of Greenwich Council shall pay to Wyse Cars, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to Appeal Ref: APP/E5330/W/17/3166474 (Appeal A); such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the Royal Borough of Greenwich Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Beverley Wilders*

INSPECTOR