
Costs Decisions

Site visit made on 3 December 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Appeal A: APP/H5960/W/19/3230641

Alchemist, 225 St Johns Hill, London SW11 1TH

- 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 V U Chem for a full award of costs against the Council of the London Borough of Wandsworth.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development described as change of use from Use Class A4 to Use Class A1, A2, A3, A5 and D2.
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Appeal B: APP/H5960/W/19/3238915

225 St Johns Hill, London SW11 1TH

- 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 Cashco UK Ltd for a full award of costs against the Council of the London Borough of Wandsworth.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development described as change of use of ground floor from Use Class A4 to Use Class D2.
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Decisions

1. The application for an award of costs in relation to Appeal A is dismissed.
2. The application for an award of costs in relation to Appeal B is dismissed.

Reasons

3. 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 applicant claims that the Council acted unreasonably in relation to both appeals on grounds which I summarise as:
 - a) failing to produce evidence to substantiate the reason for refusal regarding the site's historic and community value;
 - b) failing to take proper account of marketing evidence; and
 - c) causing delays at appeal stage.

5. In relation to Ground (a), the applicant states that the vague and generalised assertions were made concerning the historic and community value of the site at application stage.
6. The PPG states that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can nonetheless be taken into account.
7. In this regard it is not clear how the Council's actions at application stage caused the applicant to incur unnecessary or wasted expense at appeal. Moreover, in relation to both appeals, the Council provided an explanation of why it considered that the pub held historic and community value as part of its statement of case. This may not have been exhaustively detailed, but it constituted substantiation nonetheless. Furthermore, and as set out in my main decision, I broadly agree with the Council that the site holds both community and historic value. Ground (a) therefore fails.
8. In relation to Ground (b) the applicant states that the Council conceded at appeal that marketing evidence submitted at application stage in relation to Appeal A was adequate. Therefore, all costs subsequently incurred in producing further marketing evidence, submitting a further planning application, as too therefore all the costs involved in both appeals, were unnecessary or wasted.
9. The Officer Reports prepared in relation to both schemes state that less than 18 months marketing had taken place at the time the applications were submitted. This is indeed borne out by the fact that marketing commenced in January 2018, with refusals issued in September 2018 and April 2019, at roughly 9 months and 16 months respectively. The period of marketing was clearly contrary to the requirement set out in the supporting text of Policy DMC 1 of the Wandsworth Local Plan Development Management Policies Document 2016, which was reasonably applied by the Council in favour of the 24 month period specified in emerging Policy HC7 of the Draft London Plan July 2019.
10. Following submission of Appeal A, the marketing material submitted in relation to original application was independently reviewed. Whilst this was found to be adequate, this conclusion was only drawn in the context of the marketing having continued after the date of refusal, up to and beyond the 18 months required. Neither the review nor the Council therefore concede that the marketing evidence submitted at application stage was adequate at that time.
11. Indeed, there would have been little reason to review the marketing evidence at the application stage, as no such review could possibly have reached a conclusion that adequate marketing had taken place.
12. Likewise, even had the Council engaged more closely with the applicant during determination of the scheme related to Appeal B, it would have remained the case that the period of marketing fell short of the 18 months required. For this and the above reasons Ground (b) fails.
13. With regard to Ground (c) the applicant complains that delays were caused at appeal stage whilst the marketing evidence was reviewed by the Council. The review has however worked to the advantage of the appellant insofar as this has provided a basis for Appeal B to be allowed. The necessity for review at appeal stage itself only arose because inadequate marketing was undertaken

by the appellant at the application stages, and the review was presumably undertaken at the Council's expense. For these reasons, and also given that no related costs incurred directly in relation to the appeal by the applicant have been identified, Ground (c) fails.

Conclusion

14. For the reasons set out above I conclude that the applicant's claim for a full award of costs in relation to both Appeal A and Appeal B should be dismissed.

Benjamin Webb

INSPECTOR