



Costs Decision

Site visit made on 24 November 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Costs application in relation to Appeal A Ref: APP/L1765/W/20/3258336 20 Brambridge, Brambridge SO50 6HZ

- 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 Mr K Dalton-Harrison for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission the change of use from retail with living accommodation to 100% dwelling with single storey extensions and elevational alterations.
-

Costs application in relation to Appeal B Ref: APP/L1765/W/20/3258335 20 Brambridge, Brambridge SO50 6HZ

- 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 Mr K Dalton-Harrison for a full award of costs against Winchester City Council.
 - The appeal was against the refusal of prior notification for the proposed change of use from A1 to C3.
-

Decision

1. Appeal A - the application for an award of costs is refused.
2. Appeal B – the application for an award of costs is refused.

Reasons

3. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. In respect of Appeal A, an award of costs is sought because, in summary, by refusing planning permission for development which should clearly be permitted having regard to the development plan, national policy statements and any other material considerations, the Council have stopped much needed housing being created.
5. It is argued that the Council has disregarded the professional advice of the marketing agents for the premises and the Council's own Estates Manager. Detailed marketing information and analysis was submitted and this did not appear to be contradicted by the Estates Manager. The Council within their delegated report have not justified why they have disregarded or how they disagree with these professional and experienced practitioners and have simply

- refused the application. The Council has not produced evidence to substantiate its second reason for refusal in relation to additional vehicle movements, making only very vague and generalised criticism without any detailed appraisal of the scheme which has resulted in inaccurate assertions on the impact of the proposal.
6. The nearest competitor store, only 0.5 miles away within the heart of Colden Common village, is far more sustainably located and provides a much greater choice of products which has significantly impacted on Brambridge Stores trade, yet this is not given weight in the decision.
 7. In respect of Appeal B, the applicant feels misled by the Council and incurred unnecessary expense in the appeal process. It is said that the case officer having extensive knowledge of the site and the nature of the proposal, considered the conversion and advised by email that the proposed development appears to follow point M.1 (a) to (g) aside from the porch and rear extensions which would contravene part (e) and as such invited a prior notification application to be submitted for just the conversion. Despite this email, the same officer refused the prior notification application. As a consequence, the applicant believes that the Council has acted unreasonably in refusing Appeal B which clearly complies with the permitted development rights.
 8. The Council has responded. In respect of Appeal A it is explained that in the Council's view the material planning considerations, including the professional input from the Council's specialists and external companies were considered as part of the overview and appraisal of the scheme and are considered to be duly addressed and scrutinised within the officer's report.
 9. The Council dispute that vague and generalised assertions have been made. It is explained that Policy DS1 of the Winchester District Local Plan Part 2 (the Local Plan) is an important policy of the Development Plan which covers a presumption in favour of sustainable development in accordance with the National Planning Policy Framework (the Framework). It is the Officer's professional view that the loss of this service would result in additional vehicle trips given the rural location of the application site and an assessment has been made against the policies of the adopted plan in this regard. A Council decision which disagrees with the appellant's view does not constitute unreasonable behaviour.
 10. In respect of Appeal B, the Council argue that the applicant has failed to demonstrate that it would not be undesirable for the building to change to a C3 use because of the impact on the adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops).
 11. The Council comment that when responding to the applicant in respect of the prior notification proposal, the case officer raised an initial concern that the change of use may be undesirable because of the impact on the adequate provision of services of the sort that may be provided by Class A1 (Shops). It is argued that this shows that the Council was proactive and was not unreasonable in refusing the submission because of this prior notification matter.
 12. Examining these matters, it is clear that the development plan seeks as a starting point to protect local services and facilities. Policy CP6 of the Local Plan

- allows, subject to detailed criteria, the loss of such services in limited circumstances. There is an emphasis on the applicant to provide the evidence to demonstrate that this is the case. The submissions from the applicant in relation to the marketing of the premises as an A1 shop and the related analysis are fairly extensive. The comments of the Council's Estate Manager generally supports the view that the shop use is unrealistic to continue.
13. The Planning Report does refer to these documents although it would have been appropriate to have provided a more detailed commentary on the advice of these practitioners in respect of the A1 marketing. The Planning Report, nevertheless, raises some legitimate concerns with the marketing information that had been submitted.
 14. The information from the marketing agents at the application stage focused mainly on the prospects of the premises being used in the future for an A1 use. This was understandable as the premises were being operated at that time and the continuation of the business could be considered to be the more likely prospect. However, although commented on by the Estates Manager, I consider that the submissions were more limited in seeking to demonstrate whether there was a reasonable prospect that an alternative service or facility of community benefit could be provided on the site. This was a key criterion of Policy CP6 of the Local Plan which would have to be met to justify the loss of the floorspace.
 15. This is referenced in the Planning Report and the first reason for refusal in relation to Appeal A broadly references this issue. At that time I consider that the Council was not unreasonable in raising this as a matter which in their view showed the evidence did not conclusively demonstrate complete compliance with Policy CP6. In my decision, I consider that it was the subsequent marketing activity after the shop had closed and was empty which helped to demonstrate that this element of Policy CP6 had been met.
 16. The second reason for refusal concerns the greater reliance on the private vehicle for local residents were the shop use to be lost. While I consider that this matter has reasonably limited weight in the overall considerations this is a matter of judgement and a legitimate planning consideration. The reason for refusal is not without some merit, as well as support from the development plan and the National Planning Policy Framework.
 17. Taking all these matters into account, the Council could have provided a more comprehensive commentary and analysis regarding the submitted evidence and internal advice in the Planning Report in respect of the Appeal A proposal. This could also have included a fuller analysis of the relationship of the site to the shop in Colden Common. Nevertheless, based on the starting policy position that the local service is to be protected, the evidence at the application stage was not so conclusive as to prevent the Council making a judgement that it did not demonstrate policy compliance and therefore the planning balance fell in favour of refusal. Consequently, the refusal on the two grounds raised does not demonstrate unreasonable behaviour and Appeal A could not be avoided.
 18. In reference to Appeal B, the case officer does advise the applicant on the suitability of whether a submission could be made under Class M with the removal of the proposed external alterations. This appears to be correct advice in that a submission could meet the conditions and limitations of permitted development. However, such a submission is dependent on the subsequent

consideration of the prior approval matters. The case officer in his e-mail raises an initial concern with the prior approval matter concerning whether it may be undesirable for the building to change from a shop. I do not consider that the e-mail necessarily encouraged a submission, simply indicated it was possible and highlighted a potential concern which subsequently led to the refusal of the application. It is common practice that the views of an officer are made without prejudice to the final decision and I see no substantive issue with the approach that the Council took in this matter. The refusal of the prior notification submission was consistent with the earlier refusal of planning permission.

19. As a result, it follows that in terms of the issues raised by the applicant in the costs claims, I cannot agree that the Council has acted unreasonably in this case and the appeals could not have been avoided. Accordingly, the applicant was not put to unnecessary or wasted expense.

Conclusion

20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified in respect of either appeal.

David Wyborn

INSPECTOR