
Costs Decision

Site visit made on 12 March 2020

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Costs application in relation to Appeal Ref: APP/R1845/W/19/3242723 25 Vicar Street, Kidderminster DY10 1DA

- 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 Shipleys for a full award of costs against Wyre Forest District Council.
 - The appeal was against the refusal of planning permission for change of use from retail (class A1) to amusement centre (adult gaming centre) and construction of a smoking shelter to the rear.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Guidance sets out examples of substantive behaviour by local planning authorities which may give rise to an award of costs¹. The appellant asserts that in this case, the following are relevant: (i) 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; (ii) failure to produce evidence to substantiate each reason for refusal on appeal; (iii) vague generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. In its decision notice, the Council referred to Policy SAL.GPB2 of the Site Allocations and Local Plan and KCA.GPB2 of the Kidderminster Central Area Action Plan. As set out in my appeal decision, I have found that, although the proposal would comply with criteria 2.i – 2.iv. of Policy SAL.GPB2 regarding development in Primary Shopping Frontage areas, the policies do not provide for the specific use proposed in these areas, and in this regard there would be conflict. However, having considered the particular circumstances of the case, I concluded that the proposed loss of a retail unit would not cause material harm to the vitality and viability of the town centre, and on that basis, the appeal was allowed.

¹ PPG Paragraph: 049 Reference ID: 16-049-20140306

5. Given that there would be conflict with the development plan, it is not the case that the development should clearly have been permitted. Conflict with the development plan provided reasonable grounds for the Council to have refused planning permission. Furthermore, the evidence provided in the planning officer's report and the Council's statement was sufficient to explain the reasoning behind the decision, which was supported by reference to the relevant policies.
6. The Council made reference to third party representations in its officer report and statement. This included consideration of issues including health and crime, which are legitimate planning matters. Whilst I agree that specific evidence was not provided about the potential impacts of the proposal in relation to these concerns, the Council did not rely on these matters in their reasons for refusal. As such, it was not necessary to provide such information to substantiate the decision.
7. I conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, an award of costs is not justified and the application for costs is refused.

R Morgan

INSPECTOR